

HANDBOOK OF INDUSTRIAL LAW

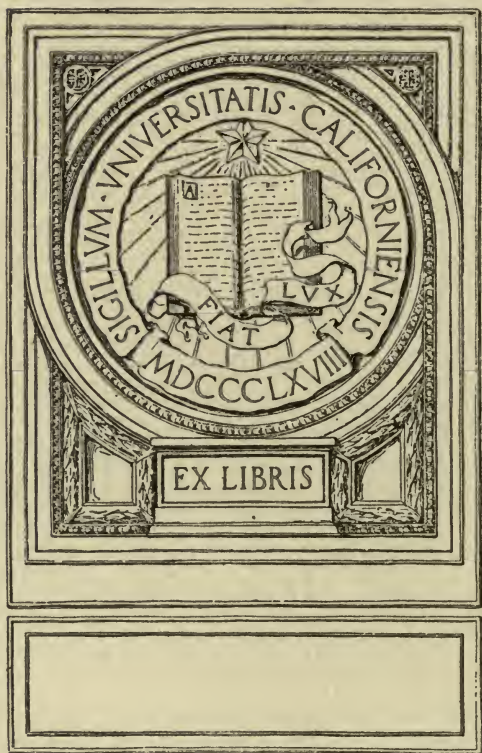
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By
JOHN H. GREENWOOD

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A HANDBOOK OF INDUSTRIAL LAW

A PRACTICAL LEGAL GUIDE FOR
TRADE UNION OFFICERS AND OTHERS

BY

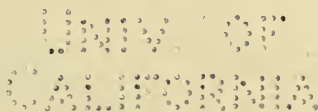
JOHN HENRY GREENWOOD, B.Sc.

of the Inner Temple, Barrister-at-Law

AUTHOR OF

"THE LAW RELATING TO TRADE UNIONS," "THE THEORY AND PRACTICE OF
TRADE UNIONISM," "AMOUNT OF COMPENSATION AND REVIEW
OF WEEKLY PAYMENTS UNDER THE WORKMEN'S
COMPENSATION ACT, 1906."

LECTURER ON TRADE UNION LAW AT RUSKIN COLLEGE, OXFORD



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PREFACE

THE handbook is the outcome of a number of courses of lectures on Industrial Law delivered at Ruskin College, Oxford, during the last five years. At these lectures I have found that the legal relationships between trade unions and their members, and amongst the members themselves, cannot very well be understood without a knowledge of the fundamental principles of Contract Law. Nor can the law relating to industrial disputes be properly appreciated without some acquaintance with the Criminal Law and the Law of Torts. In Chapters I and II of the handbook an attempt has been made to meet these requirements.

It is hoped that the chapters on Securities and Investments, and on Trusts and Trustees, will be helpful not only to trustees of trade unions, friendly societies, and other similar bodies, but also to those members of the general lay public who assume the honourable but sometimes thankless office of trustee.

The chapters on National Health and Unemployment Insurance, and on the Workmen's Compensation Act, deal with these matters from the general point of view, and are intended to serve as a guide to all who are concerned with the working of these Acts. Every important provision of the various National Insurance Acts is included, together with much additional information from the Official Regulations and Circulars, and an attempt has been made, by means of abundant references, systematically to incorporate with the text the Regulations and Circulars themselves.

JOHN H. GREENWOOD.

3 King's Bench Walk, N.,
Inner Temple, January 1916.

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ABBREVIATIONS

STATUTES

C.M.A.	COAL MINES ACT.
C.M.R.A.	COAL MINES REGULATION ACT.
M.S.A.	MERCHANT SHIPPING ACT.
N.I.A.	NATIONAL INSURANCE ACT.
N.I. (PART I, AMENDMENT) A.	NATIONAL INSURANCE (PART I, AMENDMENT) ACT.
N.I. (NAVY AND ARMY) A.	NATIONAL INSURANCE (NAVY AND ARMY) ACT.
T.U.A.	TRADE UNION ACT.
W.C.A.	WORKMEN'S COMPENSATION ACT.

REPORTS

[1912] A.C.	APPEAL CASES OF 1912.
BEAV.	BEAVEN.
BURR.	BURROW.
BUTT (OR BUTTERWORTH)	BUTTERWORTH'S WORKMEN'S COMPENSATION CASES.
[1892] 1 Ch.	CHANCERY CASES, Vol. I. of 1892.
Ch. D.	CHANCERY DIVISION.
Ch. D. (Ir.)	CHANCERY DIVISION, IRELAND.
Cox C.C.	COX'S CRIMINAL CASES.
Ex.	EXCHEQUER.
F.	FRASER (SCOTTISH).
Ir. L.T.R.	IRISH LAW TIMES REPORTS.
[1908] 2 Ir. R.	IRISH REPORTS, Vol. II. of 1908.
[1901] 1 K.B.	KING'S BENCH CASES, Vol. I. of 1901.
L.J.C.P.	LAW JOURNAL, COMMON PLEAS.
L.J.Ch.	LAW JOURNAL, CHANCERY.
L.J.K.B.	LAW JOURNAL, KING'S BENCH.
L.J.M.C.	LAW JOURNAL, MAGISTRATES' CASES.
L.J.Q.B.	LAW JOURNAL, QUEEN'S BENCH.
L.R. 6 Ch.	LAW REPORTS, CHANCERY CASES, Vol. VI.
L.R. 15 Eq.	LAW REPORTS, EQUITY CASES, Vol. XV.
L.T.	LAW TIMES REPORTS.
L.T.N.S.	LAW TIMES REPORTS, NEW SERIES.
M.-S.	MINTON-SENHOUSE.
M. & W.	MEESON AND WELBY.
Q.B.	QUEEN'S BENCH CASES.
[1897] 1 Q.B.	QUEEN'S BENCH CASES, Vol. I. of 1897.
20 Q.B.D.	QUEEN'S BENCH DIVISION CASES, Vol. XX.
R.	RETTIE (SCOTTISH).
[1910] S.C.	SESSIONS CASES OF 1910 (SCOTTISH).
Sc.L.R.	SCOTTISH LAW REPORTER.
TAUNT.	TAUNTON.
T.L.R.	TIMES LAW REPORTS.
W.N.	WEEKLY NOTES REPORTS.

HANDBOOK OF INDUSTRIAL LAW

CHAPTER I

GENERAL PRINCIPLES OF THE LAW OF CONTRACT

THE terms contract and agreement denote the same thing, but the latter term is more commonly used. An agreement is not legally binding unless the parties to it intend to be bound and to bind each other, or lead one another so to believe. Thus, if A and B agree to dine together this is not an agreement in the legal sense, because neither party intends to be bound himself nor to bind the other. Or if a number of persons form themselves into a temperance society and agree with each other not to touch alcoholic liquors, the agreement is not legally binding because there is no intention to create anything but a moral obligation. As the performance of such agreements is voluntary they are known as voluntary agreements.

The provisions made in trade union rules as to the hours members shall work and the wages they shall work for are voluntary agreements. The Courts will not enforce them, though the union may, of course, expel or punish a member who refuses to abide by them.

An agreement need not, as a rule, be in writing in order to be binding. A verbal promise is generally as good as a written one. It is obvious, however, that it is much easier to prove the existence and the terms of a contract if it is in writing, and certain classes of contracts, such as those

referred to on p. 5 below, are by law required to be written.

The great majority of agreements, whether oral or written, are entered into in the following way: One party makes an offer or proposal, and the other party accepts it. As soon as the offer has been accepted a binding contract comes into existence. The offer or acceptance, or both, may be express or implied. An express offer or acceptance is one that is expressed in words spoken or written. An implied offer or acceptance is one that has not been put into words, but is presumed from the conduct of the party.

If A says to B, "I will give you £5 for that bicycle," and B says "I agree," there is at once a binding contract, and if either party fails to perform his promise, the other has a legal remedy against him. Here both offer and acceptance are express.

In the following case the acceptance is implied. A tradesman sends goods on approval to a customer. The customer, without saying anything, uses the goods. By so doing he impliedly accepts the tradesman's offer, and is therefore legally bound to pay the price named, or a reasonable price if no price has been named.

In dealing with railway companies and other bodies people frequently accept tickets, vouchers, etc., with special conditions printed on them. These conditions are rarely read and therefore, in the ordinary sense, it cannot be said that the holder of the ticket, etc., has agreed to them. Nevertheless the taking of the ticket, etc., without protest is an implied acceptance of the conditions stated upon it, if those conditions are usual and reasonable. Should the conditions be unusual or unreasonable it is the company's duty to draw the attention of the public to them. This may be done orally by the person issuing the ticket, or the words on the ticket may be underlined or printed in conspicuous type. If this be not done the holder of the ticket is not bound by any unusual or unreasonable terms unless the company can prove that he knew of these terms and assented to them.

Similar considerations apply to the printed rules of a society. When a person is admitted to the society the rules are handed to him, and these set forth the terms of his agreement with the society. If the rules are usual and reasonable his acceptance of them, without protest and unread, binds him as effectually as if he had read them and expressly stated his assent to be bound by them. And where a company or municipal authority embodies the conditions of service of its employees in a set of printed regulations, these are binding on the employees to the same extent.

It will be obvious that when an offer is made it must be accepted within a reasonable time. If A offers to sell a watch to B for a certain sum, and B does not give a definite assent within a reasonable time, A is entitled to assume that B has rejected the offer, and B cannot, by a belated acceptance, clinch the offer and make it into a contract. What is a reasonable time depends on the circumstances of each case. Thus an offer to sell fresh fish, or shares liable to rapid fluctuations in value, could not be kept open for more than a few hours, while in the case of an offer to sell a horse or build a house the offeree¹ might reasonably expect a much longer time to consider the matter.

Revocation.—The offeror is, however, quite free to revoke his offer, provided that he does so before the offeree has accepted. He may revoke his offer either by express words, or by doing something which is inconsistent with the idea of the offer remaining open (implied revocation): *e. g.* A writes to B offering to sell certain goods for £30. B says he will take a day or two to think it over. A few hours later A sells the goods to C. If B is aware of the sale to C it is too late for him to write and accept A's offer, for A, by his conduct, has revoked it. Moreover, so long as B

¹ The language of the law contains many pairs of words ending respectively in "or" and "ee," and denoting the two parties to an arrangement. Thus the lessor is the one who lets his land, the lessee is the one to whom he lets it. The donor is the one who gives something, the donee the one to whom he gives it. The offeror is the one who makes an offer, the offeree the one to whom the offer is made.

knows of the sale to C it is immaterial whether he has got his information direct from A or from some other source.

When a person desires to revoke an offer he should be sure that the revocation actually reaches the other party, for a revocation of an offer does not take effect until it has been communicated to the offeree.

A promise to keep an offer open for a certain time does not bind the offeror unless the offeree has given some consideration for the promise. Thus A offers to sell B a watch for £9. B says, "Will you give me a week to think it over?" A consents to this, but sells the watch to C next day, informing B of what he has done. B has no remedy. If, however, B had given A one shilling (or even promised him a shilling) to keep the offer open for a week A would have been legally bound for a week not to sell the article to any one but B. In such case B is said to have an option to purchase the watch.

When negotiations are carried on by letters passing through the post, difficulties are apt to arise from the loss of letters or from letters crossing one another in the post. Such difficulties are settled by applying the following rules—

1. An offer is not considered to have been made until it actually reaches the person for whom it is intended (or his agent).

2. A revocation of an offer is not considered to have been made until it actually reaches the person for whom it is intended (or his agent).

3. An acceptance of an offer by letter or telegram is considered to have been made as soon as it is put into the post.

The third rule does not, of course, apply if either of the parties has expressly or impliedly intimated that he does not regard the post office as the proper medium for communications.

The following cases will illustrate the working of the above rules—

A, by letter, offers to buy some shares in a company and asks for an answer by post. B, the secretary of the company, writes at once accepting the offer and the letter is

posted, but is lost and never reaches A. A is bound to take the shares and pay for them (Household Fire Insurance Co. v. Grant, 4 Ex. D. 216).

X in Cardiff wrote on October 1 to Z in New York offering to sell 1000 boxes of tin plates.

Z received the letter on October 11 and *at once accepted* by cable.

X on October 8 had posted a letter withdrawing the offer, and this reached Z on October 20.

X's revocation came too late as it *did not reach* Z until after the offer had been accepted (Byrne v. Van Tienhoven, 49 L.J.C.P. 316).

Consideration.—A simple¹ contract is not legally binding unless the party making the promise receives some equivalent or return for the thing he promises. This equivalent is known as the consideration. The consideration in a contract may take the form of (a) some material object such as money, goods, land, etc., (b) some act such as a service rendered, (c) a promise.

Examples—

1. A promises to deliver a certain article to B on a certain day. Such a promise does not bind A.

2. A promises to deliver a certain article to B on January 1 and B promises to pay £50 on June 1 following. B's mere promise to pay the money is a sufficient consideration to entitle him to delivery of the promised article on January 1.

3. A promises to settle a sum of money on B when he marries Miss A. If the marriage takes place A is bound to settle the money. The marriage is the consideration.

4. A workman is entitled, under the Workmen's Compensation Act, to compensation at the rate of 15s. per week. The payments being four weeks in arrears, the employer offers the man £3 and persuades him to sign an agreement releasing the employer from all further claims. This agreement is not binding on the workman, for there is no consideration for it, the £3 being already due.

¹ A simple contract is a contract which is not under seal. Contracts under seal, *i. e.* deeds, are binding without consideration.

So long as there is some consideration for a contract the Court will not concern itself with the sufficiency or insufficiency thereof. Thus in Example 4 above, if the employer had paid the man only so much as a shilling more than the arrears due, that shilling would have been a good consideration for the release of future claims.

Contracts which must be in Writing.—Although, as a general rule, an oral contract is as binding as a written one, there are certain contracts which cannot be enforced unless they are in writing and signed by the party liable. It is not possible to give here more than a brief mention of these contracts, and fuller information must be sought in such works as Stevens' *Mercantile Law*, and Anson or Addison on Contracts.

The following contracts cannot be enforced unless they are in writing—

1. A contract of suretyship or guarantee, *i. e.* a contract by which one person, A, promises another, B, to answer for the debt, misconduct, or miscarriage of a third person, C, C also remaining liable (Statute of Frauds, Section 4).

2. A contract which cannot be performed within one year, *e. g.* an agreement by A to work for B for one year or more (Statute of Frauds, Section 4).

3. A contract for the sale of real property¹ or of any interest in real property (Statute of Frauds, Section 4).

4. A contract for the sale of goods of the value of £10 or more when there has not been payment or part payment of the price, nor delivery and acceptance of the goods or part of them (Sale of Goods Act, 1893, Section 4).

Contracts of Insurance.—Contracts of Life and Fire Insurance need not be in writing, but though a verbal contract can always be enforced a penalty of £20 is incurred if a duly stamped policy is not executed within one month. In cases of Marine Insurance a stamped policy is necessary from the first.

A contract to sell shares usually need not be in writing,

¹ Real property is land and the buildings upon it; and certain interests in land.

but the actual transfer of the shares must generally be effected by a written instrument in a form prescribed by statute.

The Stamping of Agreements, etc.—For the purpose of raising revenue a duty is, as a rule, payable on the execution of agreements and various other legal instruments. This is paid by the purchase of a stamp, representing the amount of the duty payable, and which is impressed upon or affixed to the paper or parchment on which the agreement, etc., is written.

The stamping of agreements other than agreements under seal is governed by the following provisions in Schedule I of the Stamp Act 1891—

Any agreement, or any memorandum of an agreement, not made under seal, and not otherwise specifically chargeable with stamp duty, must bear a sixpenny stamp which may be adhesive. An adhesive stamp must, of course, be cancelled by the person executing the agreement.

Exceptions : The following do not require stamping—

1. An agreement or memorandum the matter whereof is of less value than £5.

2. An agreement or memorandum for the hire of any labourer, artificer, manufacturer,¹ or menial servant.

3. An agreement, letter, or memorandum made for or relating to the sale of goods, wares, or merchandise.

4. An agreement or memorandum made between the master and the mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

With a few other exceptions all agreements, whether under seal or not, must be stamped. The various instruments which require stamping are enumerated at great length in Schedule I of the Stamp Act 1891, the amounts of the duties payable being also there set out.

The penalty for neglecting to stamp an agreement or other instrument which requires stamping is that no court

¹ Manufacturer here denotes a person employed in the actual process of manufacture, *i. e.* the operative.

will enforce it or allow it to be used in evidence. But an unstamped or insufficiently stamped instrument may usually be stamped after execution on payment of the unpaid duty (plus interest at 5 per cent. if the duty is over £10) together with a penalty of £10. The penalty may be remitted, wholly or in part, at any time within three months after the execution of the instrument. Where an unstamped or insufficiently stamped instrument is produced in a court it is the duty of the judge to take notice of the omission or insufficiency of the stamp. If, however, the instrument is one which can be legally stamped after execution, it may be received in evidence on payment of the unpaid duty and the penalty, together with a further sum of £1 (Stamp Act 1891, Sections 14 and 15).

Remedies for a Breach of Contract.—If one party to a contract fails to perform his promise several courses are open to the disappointed party—

1. He may treat the breach as a discharge and refuse to be bound by his own promise. If he has already partly performed his share of the contract he may sue for payment for what he has done. Thus, a man agrees to work for a bill-posting company and undertakes not to compete with them for a certain period after leaving their employment. The company subsequently dismisses him without notice. He is no longer bound by his promise not to compete with them (*General Bill-posting Co. v. Atkinson* [1909], A.C. 118).

The above rule does not, however, apply when the breach is only a trivial one, or one which does not go to the root of the contract.

2. He may bring an action for damages. This is the most usual remedy. The amount awarded as damages is such sum as the jury (or the judge if there is no jury) think is a reasonable compensation for the injury suffered. Thus A agrees in December to sell 1000 tons of coal to B at 10s. a ton and to deliver it on March 1. He fails to deliver the coal on March 1 and B, in order to supply

his customers, has to buy coal at 12s. 6d. a ton. The damages in this case would probably be 1000 half-crowns.

3. In certain kinds of contracts (of which the most important are contracts for the sale of real property) he may obtain from the court an order for Specific Performance, *i. e.* an order commanding the defaulting party to perform the contract. Such orders are granted in cases where the payment of damages would not be a real remedy. Specific Performance is only ordered in cases where the contract is for something that can be done by a single act, such as the delivery of property. It would never be granted in a contract for personal services. Thus the Court would never order a workman to complete his contract with his employer,¹ nor would it order an employer to employ a workman.

4. Where the defaulting party is doing something which he has contracted not to do, the aggrieved party may obtain an injunction or order commanding him not to do this thing. Thus A sells his business to B and undertakes not to set up a similar business in the town for, say, two years. If he should open a similar shop within this time B can obtain an injunction ordering him to close it. Disobedience of such an order is a contempt of Court and is punishable by imprisonment.

Where the matter is one of urgency the Court, without inquiring fully into the merits of the case, may at once grant a temporary injunction, prohibiting the doing of the act pending a fuller inquiry. Such an order is known as an Interlocutory Injunction.

Wrongful Dismissal of Employees.—An employer is entitled to dismiss an employee for any reason, or for no reason, provided that in doing so he keeps within the terms of the agreement under which the man became employed. Dismissal is only wrongful if a breach of the contract of service is committed. Thus if A employs B on the terms that the employment may be terminated by a week's notice, or by payment of a week's wages in lieu

¹ There is one exception to this. See p. 16.

of notice, it is not legally wrongful (however morally inexcusable it may be) for A to give B a week's notice, or to dismiss him offhand with a week's wages, because the man's political or religious opinions are objectionable to A, his employer.

Circumstances may also justify an employer in dismissing an employee without notice, and without wages in lieu of notice. It is not possible to enumerate all the causes which would justify such conduct, but the following are the most common—

1. Wilful disobedience of any lawful order of the employer.

2. Gross moral misconduct, whether in a pecuniary sense or otherwise.

3. Negligence or conduct likely to seriously injure the employer's business.

4. Incompetence.

5. Permanent disability from illness.¹

Remedies for Wrongful Discharge.—An employee who is wrongfully discharged has two courses open to him—

1. He may simply regard the contract of service as rescinded and is then entitled to be paid for the services rendered up to the time of dismissal.

2. He may regard the dismissal as a breach of contract and sue for damages, *i. e.* for compensation for the pecuniary injury he has sustained through not being allowed to continue in the employer's service as agreed upon.

The amount of damages which may be recovered in such cases depends, of course, upon the nature of the contract, and upon the rate of wages. Very often, though not necessarily, it will be the wages for the period of notice required under the terms of the agreement.

The employee must, however, show that he was, at the time of his discharge, ready and willing to perform his part of the contract of service. This, of course, is best done by giving formal notice to the employer that he is ready and willing to continue in his service.

¹ See Smith's *Law of Master and Servant*, 6th ed., p. 102.

Rescission of Contract.—The court will order a contract to be rescinded or set aside on the ground of mistake, misrepresentation, fraud, or undue influence.

Mistake.—If a person enters into a contract under a mistake as to some essential fact, he may, on discovering his mistake, have the contract set aside; *e. g.* A offered certain property for sale; B erroneously, but quite reasonably, supposed it to include a portion which, though small, was very valuable. He agreed to buy it. Subsequently he discovered his mistake. The Court held that the contract could not be enforced (*Denny v. Hancock* [1870], L.R. 6. ch. 1).

A wrote to B offering to sell him some property, and wrote down £1100 as the price in mistake for £1200. The mistake was due to a hurried addition of items on a separate paper which was produced in court. Held that A was not bound to sell for £1100 (*Webster v. Cecil* [1861], 30 Beav. 62).

But a mistake in a matter of law does not entitle the mistaken party to have the contract rescinded. Thus during the French wars a sea captain bringing home certain treasure paid over a portion of it to the admiral of the convoy, thinking he was legally bound to do so. On discovering his mistake he brought an action against the admiral to recover the money. Held that he could not recover it as the mistake was one of law and not of fact (*Brisbane v. Dacres* [1813], 5 Taunt 143).

Misrepresentation and Fraud.—If one person, by a misstatement, whether made innocently or fraudulently, induces another to enter into a contract, that other is entitled to have the contract rescinded. It is equivalent to fraud for a person to make a reckless statement in ignorance as to its truth or falsehood. But to remain silent with regard to some material fact does not, as a rule, amount to misrepresentation or fraud. There are, however, certain classes of contracts in which it is the duty of the persons concerned to volunteer information on all essential matters. In such cases mere silence

may constitute misrepresentation. The most important examples of such contracts are : Contracts of Insurance, Contracts for the Sale of Land, and Contracts to take Shares in a Company : *e. g.* A insured a building with an insurance company, but did not mention that he had previously had several fires and had been heavily insured in each case. The company were not liable on the policy.

Undue Influence.—Where the parties to a contract stand in such relationship that one of them is in a position to exercise influence over the other, the Courts will look with a jealous eye on the contract. If there is anything in its terms which suggests that the party possessing the influence has abused his position, he will be called upon to prove that he has not used undue influence. It will be noticed that the ordinary rule of law which says that a man must be deemed innocent until he is proved guilty is here reversed. The person possessing the influence must prove that he has acted fairly, otherwise the contract is rescinded. The best way to disprove undue influence is to prove that the other party had independent advice and was a free agent.

The doctrine of undue influence has been applied to the following relationships—

1. Parent and child.
2. Guardian and ward.
3. Husband and wife.
4. Doctor and patient.
5. Nurse and patient.
6. Solicitor and client.
7. Spiritual pastor and member of flock.

The doctrine might also, in certain circumstances, be advantageously extended to the relationship of Employer and Employee, notably in cases where a workman, injured by accident, is induced by his employer to accept a lump sum of inadequate amount in satisfaction of all future claims for compensation.

Contracts of Infants, Lunatics and Drunken Persons.—Contracts entered into by infants, *i. e.* persons under the

age of twenty-one, are not subject to the ordinary rules of law. By the Infants Relief Act 1874 certain specified contracts entered into by infants are absolutely void, *i. e.* they are as though they had not been made. Among the contracts thus specified in the Act are—

(a) Contracts for the repayment of loans of money.

(b) Contracts for the purchase of goods which are not necessary to the infant.

In addition to the above and other statutory provisions, which need not be mentioned here, there is a rule of the common law which allows to an infant the option of saying whether a contract made by him shall be binding on him. Thus an infant who has entered into a contract may, if he thinks fit, treat it as binding upon himself, and compel the other party to perform it, or, if he chooses, he may treat it as not binding, and refuse to carry out his own part of it.

There are, however, certain exceptions to the common law rule, of which the following may be dealt with here—

1. Where the contract is beneficial to the infant he may be held bound by it. The case of *Evans v. Ware*, described on p. 43, is a good example. And an infant may bind himself by a contract of apprenticeship if its terms are reasonable. In the case of *Corn v. Matthews* [1893], 1 Q.B. 310, a boy signed an apprenticeship deed by which it was provided that in the event of a lock-out the master need not pay any wages, but that the boy might get work elsewhere. It was held that this provision was so disadvantageous to the boy that the deed as a whole was not binding.

In *Flower v. L.N.W.R. Co.* [1894], 2 Q.B. 65, a railway company had allowed a boy to travel on special terms in consideration of his agreeing not to make any claim on them in the event of his being injured while so travelling: Held, that this agreement was detrimental to the boy and not binding.

2. Where an infant has entered into a contract for the supply of necessaries, such as food, clothing, lodging, medical attendance, medicine, instruction, etc., he is bound

by it. It is a question of fact in each individual case whether the things supplied are necessary.

An agreement made with a lunatic or drunken person may also be treated by him as binding or not binding, as he chooses, provided that the other party knows that the person he is dealing with is a lunatic or is drunk.

Infants, lunatics and drunken persons are thus said to be under a legal disability as regards entering into contracts.

Statutes of Limitations.—There are several Acts of Parliament, the chief of which were passed in 1623, 1833 and 1874, limiting the period within which various legal rights can be enforced. Thus a right arising out of a *simple contract* cannot be enforced after six years, unless, in the meantime, the party bound by the contract has acknowledged in writing that he is bound. If the contract is one for payment of money, part payment within this period keeps the right alive for another six years. As the great majority of debts and other legal obligations probably arise out of simple contracts, it may be said that, as a general rule, legal rights must be enforced within six years from the time they are entered into or renewed. It must, however, be borne in mind that for a contract embodied in a deed the period of limitation is twenty years, while for a debt secured by a mortgage on land it is twelve years.

With regard to liabilities arising out of torts (see Ch. II), the period of limitation is, as a rule, six years, though in the case of injuries to the person it is four years, and in certain cases of slander two years. But for fuller particulars see *Pollock on Torts*, or some similar text-book. Under the Workmen's Compensation Act 1906 (Section 2), the claim¹ for compensation must be made within six months of the accident or, in the case of death, within six months from the time of death. Provided that due notice of the accident has been given as soon as practicable, and

¹ "Claim" in this section means merely a formal demand on the employer for compensation. It does not mean the instituting of legal proceedings.

that the claim is made within the above period, there appears to be no limit to the time within which legal proceedings may be commenced.

CONTRACTUAL RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE AS AFFECTED BY VARIOUS STATUTES

In the course of the last one hundred years Parliament has passed numerous Acts bearing on contracts of employment. The most important of these will be briefly dealt with.

THE EMPLOYERS AND WORKMEN ACT 1875

Under Sections 3 and 4 of this Act any dispute between an employer and a workman arising out of the contract of employment may be settled either in a County Court or in a Court of Summary Jurisdiction.¹ The Court may do all or any of the following—

1. It may set aside the contract, making such order as to payment of wages or damages as seems just.

2. It may adjust and set off against each other the claims of the employer and the workman, or may order payment of wages, damages, etc.

3. Instead of ordering payment of damages for breach of contract it may, if both parties are willing, allow the party committing the breach to give security for the due performance of the contract. The giving of security would usually consist in his promising to perform the contract under pain of payment of a specified sum of money, one or more sureties also being found.

It is under this statute that bodies of workmen (especially boys) are brought before the magistrates for being absent from work without permission, and for similar breaches of the working contract. The proceedings in such cases are civil proceedings, but owing to the fact that most

¹ A Court of Summary Jurisdiction is a court consisting of one or more magistrates, and having power under the Summary Jurisdiction Acts to deal in a summary manner with criminal matters and certain civil matters.

people associate police courts with crime, the parties proceeded against too often figure in the public eye as malefactors. To the men concerned this is unfair and degrading, while in the case of boys the effects may be in the highest degree pernicious. If these cases cannot be settled by the Conciliation Boards and similar bodies, they should be heard by a special bench of magistrates selected from the ordinary justices, and sitting in some place other than the police court buildings.

It should be mentioned that in cases under the Employers and Workmen Act, the jurisdiction of a Court of Summary Jurisdiction is limited as follows—

1. The amount claimed must not exceed £10.
2. The Court cannot order the payment of a sum exceeding £10 (exclusive of costs).
3. The Court cannot require security to an amount exceeding £10.

The possibility of proceeding under this Act against strikers individually should be borne in mind in considering the immunities given to officials of trade unions and others by Section 3 of the Trade Disputes Act 1906. See p. 108 below.

Apprentices.—Where the dispute is between an employer and an apprentice, a Court of Summary Jurisdiction may exercise the following powers—

1. It may rescind the contract of apprenticeship, and order the premium or a part of it to be repaid.
2. It may order the apprentice to perform his duties, and, if he fail to obey the order within one month, it may send him to prison for fourteen days. The Court may also accept the security of some other person for the apprentice's performance of his duties.
3. The person (if any) responsible for the good conduct of the apprentice (*e. g.* his parent or guardian) may be summoned to attend the hearing, and may be ordered to pay damages for the apprentice's breach of contract.

Deductions from Wages.—Where a woman, young person, (*i. e.* worker between fourteen and eighteen years of age)

or child (*i. e.* worker under fourteen years of age) is brought before the Court for being absent from work, the Court cannot order deductions to be made from wages to an extent greater than the actual damage sustained by the employer as a result of such absence.¹

THE TRUCK ACTS OF 1831, 1887 AND 1896

The main purpose of these Acts is to secure payment of wages in coin and not in kind. Should any wages be paid either wholly or partly in kind the payment, so far as it is in kind, is void, and the workman may recover the part not paid in money. To this rule, however, there are some exceptions. Thus an employer may supply his employees with medicine, medical attendance, tools, materials, fuel, lodgings, and other things (see Section 23 of the Act of 1831 for the full list), and he may make deductions from wages in respect of them. But the deductions must not exceed the real and true value of the things supplied, and the workman must have agreed in writing to the deduction. Deductions for the sharpening and repairing of tools must be provided for by an agreement not forming part of the condition of hiring. Where deductions are made in respect of medicine, medical attendance, tools, or education of children, the employer must keep an account of receipts and expenditure, and submit them to an annual audit.

Another important exception is made in the case of the agricultural worker, the employer being permitted to give him food, non-intoxicating drink, a cottage and other

¹ In the Employers and Workmen Act the expression "workman" does not include a domestic or menial servant but means any labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or person otherwise engaged in manual labour. The term is considerably narrower than the corresponding terms of "workman" and "employed contributor" used in the Workmen's Compensation Act and the National Insurance Act respectively, for not only are "domestic and menial servants" excluded, but the phrase manual labour has been restricted by judicial interpretation. Thus it has been held that it does not cover such occupations as those of a grocer's assistant, a goods guard, a tramcar driver, and a hairdresser.

allowances and privileges in addition to money wages, as a remuneration for his services.

An employer must not make it a condition of service that the workman shall spend his wages in any particular way or at any particular shop.

The employer may advance money to a workman to be contributed to a friendly society or duly established savings bank, and he may also advance money for the relief of the workman in sickness, or for the education of his children. Any money so advanced may be deducted from the workman's wages.

If a master is legally liable to provide a servant or apprentice with food, clothing, medical aid, or lodging, but does not perform his obligation, and the health of the servant or apprentice is thereby injured or threatened with injury, the master becomes liable to a fine of £20 or six months' imprisonment. Section 6, Conspiracy and Protection of Property Act 1875.

The Truck Act of 1896 prescribes the conditions under which an employer may enforce payment (by deductions from wages or otherwise) in respect of fines, injury to materials, bad or negligent work, use or supply of materials, tools or machines, standing room, light, heat, etc.

The conditions are as follows—

1. There must be a written contract signed by the workman; or

2. The terms of this contract must be contained in a notice constantly and publicly exhibited in the works.

3. The offences for which fines are payable and the amount of each fine must be specified.

4. The offences must be such as to cause damage or loss to the employer, or interruption or hindrance to his business.

5. In the case of a fine the amount must be fair and reasonable.

6. In the other cases the amount must be fair and reasonable, and not exceeding the loss or damage caused or the value of the things supplied.

7. On the occasion of each deduction or payment, the employer must give to the workman particulars in writing stating the amount of the exaction and the reason for making it.

It is the duty of inspectors of factories and of mines to enforce the provisions of the Truck Acts in the places inspected by them.

The Hosiery Manufacture (Wages) Act 1874.—In one industry, the hosiery manufacture, all deductions or stoppages from wages, except for bad or disputed workmanship, are illegal. Contracts for frame rents and charges between employers and workmen are also illegal. But any workman using a frame or machine otherwise than for the purpose for which it was lent, is liable to a fine of 10s. for each day in which it is so misapplied.

For full particulars of the Truck Acts see Redgrave's *Factory Acts*.

The Shop Clubs Act 1902.—This Act, like the Truck Acts, is a statute designed to secure real freedom of contract for the workman. Under this Act it is an offence punishable by fines, ranging from £5 to £20, for an employer to require of a workman that he shall not be a member of of any friendly society or that he shall become a member of a shop club or thrift fund.

There are two exceptions to the law thus laid down—

1. An employer may require a workman to join a shop club or thrift fund which has been registered under the Friendly Societies Act and certified by the Registrar of Friendly Societies as satisfying the following conditions : (a) Substantial benefits are provided at the employer's cost in addition to those provided out of the workmen's contributions. (b) It must not be a dividing club. (c) A workman on leaving his employment is entitled either to remain a member of the club or fund, or to have his share therein paid out to him, unless it be contrary to the club rules.

The Registrar must also be satisfied that 75 per cent. of

the workmen are in favour of the scheme, and must consider any objections made by them.

The expressions "shop club" and "thrift fund" are defined to mean every club and society for providing benefits to workmen in connection with a workshop, factory, dock, shop, or warehouse.

2. The second exception is one which allows compulsory membership of any superannuation fund, insurance or other society already existing for railway servants, provided that the railway company also makes contributions.

SPECIAL PROVISIONS RELATING TO EMPLOYEES IN FABRICATORIES AND WORKSHOPS

The provisions of the Factory and Workshop Acts, 1901 and 1907, which come within the scope of this chapter, are those which restrict the employment of women, young persons and children, and protect pieceworkers' remuneration, in textile and non-textile factories and workshops. For definitions of these places see F.W.A., 1901, Section 149.

The restrictions on employment are matters of great detail, for which the Act itself (sections 23-67) should be consulted. It may, however, be useful to direct the reader's attention to the following points—

1. The hours for beginning and ceasing work are prescribed (sections 24-32).

2. Sunday work is forbidden as a rule (section 34), but there are certain exceptions (sections 42, 48 and 54).

3. Overtime is limited, Sections 49-53, Schedule II, and Special Orders of October 13, 1908, December 20, 1882, and October 20, 1909. (See also Employment of Children Act 1903, Section 3, and Factory and Workshop Act, 1907, Section 2.)

4. Night work is only allowed under certain conditions to male young persons over fourteen years of age (in some cases the limit is sixteen). Sections 54-56 and Special Orders of March 11, 1903, May 4, 1903, August 4, 1904, February 18, 1905.

5. Certain holidays are prescribed, amounting in all to six days or twelve half-days yearly (section 35). For exceptions see Sections 41, 42, 45, 54 and 111 and Special Orders of December 20, 1882, and October 13, 1908.

6. The employment of a woman within four weeks after childbirth is prohibited by section 61.

Protection of Pieceworker's Remuneration.—Occupiers of textile factories must supply pieceworkers with particulars of the rate of wages applicable to the work done. And, unless an automatic indicator is used, particulars of the work must be furnished so far as they affect the amount of wages (section 116). This provision does not apply to men's workshops (see section 157), but it has been applied to a number of other industries by special orders. These include certain of the metal trades, such as the making of cables, chains, anchors, etc., locks and keys, wholesale tailoring, the making of felt hats, wearing apparel, boots and shoes, paper and cardboard boxes, artificial flowers, brushes, nets, etc., and pea-picking.

By the Factory and Workshop Act 1907, laundries (other than "domestic" laundries) have been brought within the scope of the Factory and Workshop Acts.

For further information on the Factory Acts see Redgrave's *Factory Acts*, or Nelson's *Encyclopædia of Industrialism*.

SPECIAL PROVISIONS RELATING TO SEAMEN

The provisions of the Merchant Shipping Acts, 1894 and 1906, relating to the engagement and employment of seamen, are exceedingly lengthy, extending over more than two hundred sections of the Acts. An outline of the most important of these provisions is here given. For information on matters of detail the Acts themselves must be consulted.

The administration of the Acts is carried out in the various ports of the United Kingdom by Local Marine

Boards acting under the superintendence of the Board of Trade. The constitution of these boards is prescribed by Section 244 and Schedule 7, M.S.A., 1894. Each local marine board has its Mercantile Marine Office, with a superintendent and staff. The main business of the superintendent is to keep a register of seamen's names and characters, and to superintend and assist the engagement and discharge of seamen (Sections 246 and 247, M.S.A., 1894). In the Port of London there is a General Register and Record Office of Seamen under the Registrar-General of Shipping and Seamen. Here is kept a register of all persons who serve in ships subject to the Acts (Sections 251, 252, M.S.A., 1894).

Engagement of Seamen.—A seaman must not be engaged except by the owner, or master, or mate of the ship, or by a *bona-fide* and permanent servant of the owner, or by the superintendent of a mercantile marine office, or by some person licensed by the Board of Trade to engage or supply seamen. No remuneration must be taken for providing a seaman with employment (Sections 110–112 and 250, M.S.A., 1894).

The contract of employment, except in the case of coasting-vessels of less than eighty tons, must be in a form approved by the Board of Trade and must be signed by the master and the seaman, the former signing first. This contract must specify the nature and duration of the voyage, the number and description of the crew, the capacity in which seaman is engaged, the wages, scale of provisions to be furnished, regulations as to fines and discipline, and various other matters (Sections 113 and 114, M.S.A., 1894). In the case of a foreign-going ship the superintendent must be present at the signing of the agreement, and must be satisfied that each seaman understands the agreement. Running agreements on foreign-going ships (*i. e.* agreements extending over two or more voyages) are restricted within certain limits (Section 115, M.S.A., 1894). When the agreement has been duly executed, the superintendent grants a certificate to that effect. Without such certificate

a foreign-going ship cannot go to sea (Section 118, M.S.A., 1894).

Where a seaman is engaged in a colonial or foreign port, the agreement must be entered into in the presence of a superintendent or customs officer or British consular officer (Section 124, M.S.A., 1894).

As to meaning of "home-trade" and "foreign-going" ships, see Section 742, M.S.A., 1894).

A legible copy of the agreement must be posted up in a part of the ship accessible to the crew (Section 120, M.S.A., 1894).

Discharge of Seamen.—On the discharge of a seaman the master must give him a certificate of discharge, specifying the period of his service and the time and place of his discharge. In the case of a foreign-going ship the discharge, if it takes place in the United Kingdom, must be before the superintendent, and the master must also make a report of the conduct, character and qualifications of the seaman (or may state that he declines to express an opinion). The seaman may demand from the superintendent a copy of the report (Sections 127–129, M.S.A., 1894). It is a criminal offence to make a false report, or to fraudulently alter a certificate of discharge or report of character (Section 130, M.S.A., 1894).

A seaman must not be discharged at a place out of the United Kingdom (except at a port in the country in which he was shipped), unless the discharge is sanctioned by the "proper authority" (Section 30, M.S.A., 1906). The "proper authority" is prescribed in Section 49, M.S.A., 1906. Where a seaman is discharged abroad without his consent, it is the master's duty to pay him his wages and to provide for his maintenance and for his return to a proper "return port," *i. e.* the port at which he was shipped, or a port in the country to which he belongs, or some other port agreed to by the seaman (Sections 32 and 45, M.S.A., 1906).

In the event of a ship changing owners at a foreign port, the seamen are entitled to their discharge, and provision

must be made as above for their maintenance and return to a proper return port (Section 33, M.S.A., 1906).

When a seaman while at a foreign port is unfit or unable to proceed to sea, or has deserted, or disappeared, the master must not put to sea without obtaining a certificate from the "proper authority." In cases of unfitness or inability to proceed to sea, the wages due to the seaman must be paid to him directly if he is left in a British possession, and to the British consular officer if he is left elsewhere. In the latter case the money will be paid to the seaman after deducting any expenses incurred on his behalf. It is a criminal offence to wrongfully force a seaman on shore and leave him behind at any place, either in or out of the King's dominions (Sections 36-39, 43, 49, M.S.A., 1906).

The proper disposal of the wages of a seaman who is left behind or dies during a voyage, and of any property left on board by him, is dealt with in Sections 28 and 29, M.S.A., 1906, and Sections 169-181, M.S.A., 1894.

Wages.—At least twenty-four hours before paying off or discharging a seaman the master must deliver to the seaman or to the superintendent a full account of the wages and of all deductions to be made therefrom. The seaman on a home-trade ship must be paid at the time of discharge or within two days of the termination of the agreement, whichever happens first. On foreign-going ships an advance of £2 or one-fourth (whichever is least) must be made when the seaman lawfully leaves the ship, the balance being paid within two days. In the case of a foreign-going ship payment must be made before or through a superintendent, who is empowered, on the application of either party, to adjudicate finally on any question of wages not involving more than £5. With the written consent of both parties he may adjudicate on any question, of whatever nature and whatever the amount in dispute, raised before him (Sections 131-139, M.S.A., 1894).

A seaman may have a portion of his wages advanced to him before the voyage commences, but the amount ad-

vanced must not exceed one month's wages, and the advance must be definitely provided for in the agreement.

Provision may also be made in the agreement for the allotment of a portion (not exceeding one-half) of the seaman's wages to a near relative or to a savings bank. The allotment is made by means of allotment notes, and the person in whose favour such a note is made may demand the sum allotted as it becomes due (Sections 140-143, M.S.A., 1894; see also Sections 61-63, 65, M.S.A., 1906).

The seaman's right to his wages is secured by a "maritime lien" on the ship, *i. e.* the ship may be seized and sold by order of the Court and the proceeds devoted to paying wages. A change of ownership, after the wages have been earned, does not affect this lien, and the new owner, though he may have paid full value for the ship and may not himself have employed the seamen, may have his ship sold in order that they may be paid.

The following agreements are not binding on a seaman—

1. An agreement to forfeit his lien on the ship for wages.
2. An agreement to abandon his right to wages if the ship is lost.
3. An agreement to abandon his right to a share in salvage. This, of course, does not apply where ship is one employed on salvage service.

Where a ship is wrecked, or the seaman is left behind under a certificate of unfitness, etc. (Section 36, M.S.A., 1906), wages are due only for the part of the voyage completed. The right to wages does not depend on the earning of freight by the ship. But if in any case of wreck, etc., it is proved that a seaman has not exerted himself to the utmost to save ship and cargo, etc., he will forfeit his wages. A seaman is not entitled to wages for any period during which he unlawfully refuses or neglects to work, nor for any period of sickness due to his own default.

If, after signing an agreement, a seaman is wrongfully discharged before the voyage begins, or before he has earned a month's wages, he is entitled to the wages actually

earned together with compensation (not exceeding one month's wages) for the wrongful discharge (Section 155-163, M.S.A., 1894).

A seaman may sue for wages due (up to £50) in a court of summary jurisdiction in or near the place where his service has terminated. But if he has engaged for a voyage which is to terminate in the United Kingdom, he cannot sue for his wages abroad unless (1) he has been duly discharged with the master's written consent, or (2) he has suffered such ill-usage from the master as to warrant reasonable fear of danger to life if he remains on board (Sections 164-166, M.S.A., 1894).

If circumstances appear to justify such a step the contract of employment may be rescinded by a court of law upon such terms as seem just (Sections 168, M.S.A., 1894).

Food, etc.—The master of the ship is bound to furnish each seaman (who does not furnish his own provisions) with provisions according to a prescribed scale. (This scale is set forth in Schedule I of the M.S.A., 1906; see also Section 25, M.S.A., 1906). The provisions and water supply of a ship may be inspected by a Board of Trade officer and failure to comply with the Act is punishable by a fine not exceeding £100, and the ship may be detained until defects are remedied (Section 26, M.S.A., 1906 and Section 206, M.S.A., 1894).

If the provisions or water are unfit for consumption or deficient in quantity a complaint may be made by three or more of the crew to the commander of a British warship, a British consular officer, a superintendent, or a chief officer of customs, who will order an examination. If the complaint is justified the master will be ordered to provide the necessary provisions and water under a penalty of £20. If the complaint is not justified the complainants are each liable to forfeit one week's wages.

Where, during a voyage, the allowance of provisions is reduced (except by way of punishment) or their quality is bad, the seaman is entitled to be compensated by a

money allowance varying from 4*d.* to 1*s.* a day. Proper weights and measures must be kept on board, and, if necessary, used for serving out provisions, etc. (Sections 198, 199 and 201, M.S.A., 1894).

A foreign-going ship of 1000 tons or more must have a certificated cook (Section 27, M.S.A., 1906).

Except in the case of coasting vessels a supply of medicines, etc., according to the Board of Trade scale must be provided, as well as a book of instructions for dispensing the same sanctioned by the Board of Trade (Section 200, M.S.A., 1894).

Accommodation for seamen must be at the rate of at least 120 cubic feet of air space and 15 square feet of floor space per man (Section 210, M.S.A., 1894, and Section 64, M.S.A., 1906).

Discipline.—It is a criminal offence for a seaman to endanger his ship or the safety of any one on board by drunkenness, or wilful failure to perform his duty. Desertion, absence without leave, and refusal to join the ship or go to sea are more serious offences if committed abroad than if committed in the United Kingdom. Where the offence is committed in a home port it involves, according to its magnitude, forfeiture of property left on board and of wages already earned or a portion of them. When the offence is committed abroad liability to imprisonment is incurred in addition, and, in cases of desertion, forfeiture of wages earned in any other ship prior to returning to the United Kingdom. In the United Kingdom, or in a British possession, a deserter or seaman absent without leave may be forcibly taken on board with or without police assistance. This may also be done in a foreign country if and so far as the law of the country allows. The seaman is, however, entitled in all cases, if he desires it, to be taken before a Court to be dealt with according to law, and if the seizure is then shown to be unjustifiable the person responsible for it may be fined £20. And if, in the United Kingdom, the seaman has given forty-eight hours' notice to the master or owner of his intention to

absent himself, the Court has no power to have him conveyed on board his ship (Sections 220–224, M.S.A., 1894).

In Section 225, M.S.A., 1894, the following offences against discipline are dealt with—

(a) Quitting the ship without leave on her arrival in port and before she is placed in security. Penalty—forfeiture of one month's pay.

(b) Wilful disobedience to any lawful command. Penalty—imprisonment for four weeks, with or without forfeiture of two days' pay.

(c) Continued wilful disobedience or continued wilful neglect of duty. Penalty—imprisonment for twelve weeks, with or without forfeiture of six days' pay for every day during which the disobedience or neglect continues, or the expense of hiring a substitute.

(d) Assault on master, mate, or certificated engineer. Penalty—imprisonment for twelve weeks.

(e) Combining with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or progress of the voyage. Penalty—imprisonment for twelve weeks.

(f) Wilful damage to ship, stores or cargo. Penalty—imprisonment for twelve weeks.

The seaman's agreement may also provide for the payment of fines and other punishments, such as reduction of food allowance, for certain specified offences (Section 114 (2) (g), M.S.A., 1894). Such fines may be deducted from wages (Section 44, M.S.A., 1906).

It is the duty of the master to make an entry in the official log-book of every offence committed. This entry must be signed by the master and also by the mate or one of the crew, and must be read over to the offender (or a copy may be given him) before the arrival of the ship in port, or before her departure if she is at the time in port (Section 228, M.S.A., 1894).

A register of seamen who have deserted or failed to join their ships after signing the agreement is to be kept by the superintendent of each Mercantile Marine Office

and masters of ships may inspect it (Section 230, M.S.A., 1894).

Where a seaman desires to make a complaint to a magistrate, consular officer, or commander of a British warship against the master or any of the crew, the master must give him facilities for appearing before the person to whom the complaint is to be made (Section 211, M.S.A., 1894).

Sickness.—Under Section 34, M.S.A., 1906, a seaman injured in the service of the ship, or suffering from any illness (not being venereal disease or an illness due to his own misconduct), is entitled, at the expense of the owners, and without deduction from wages to the following—

1. Medical and surgical attendance, medicine, etc.
2. Maintenance until he is cured, or dies, or is returned to a proper return port.
3. Conveyance to a proper return port (see Section 45, M.S.A., 1906).
4. In the case of death the expense (if any) of burial must also be borne by the owner.

As to the effect of this section on the seaman's rights under the Workmen's Compensation Act and the National Insurance Act, see pp. 225 and 265 below.

The provisions for the relief, etc., of shipwrecked and distressed seamen which do not come within the scope of this chapter are set out in Sections 40–42, 46–49, M.S.A., 1906.

Fishing Boats.—Every seaman on board a trawler of twenty-five tons or more must be engaged by means of a written agreement in a form approved by the Board of Trade. This must be signed by the skipper or owner before the seaman signs it. The terms of the agreement are almost identical with those for an ordinary ship and there are similar restrictions on running agreements, see p. 22 above. It is the duty of the skipper or owner to see that each seaman understands the agreement before signing it (Sections 399–408, M.S.A., 1894). Agree-

ments with boys under thirteen years of age are void. Boys between thirteen and sixteen can only go to sea under apprenticeship indentures or other agreements made in form prescribed by the Board of Trade, though they may be employed under daily agreements not in writing. Apprenticeship indentures and other agreements with boys under sixteen must be executed in the presence of a superintendent, who must satisfy himself (1) that the indenture or agreement is in accordance with the Act, (2) that the master is a fit person for the purpose, (3) that the boy is not under thirteen and is sufficiently healthy and strong, (4) that his nearest relatives or guardians assent. The superintendent at the port at which the indenture or agreement is executed may take legal proceedings in his own name to enforce it. It is illegal for any one to take any payment from either of the parties to such an agreement (Sections 392-398, M.S.A., 1894).

Discharge.—The provisions as to certificate of discharge are the same as for ordinary ships, see p. 23 above. A seaman wrongfully discharged is entitled to compensation. The seaman is entitled to have delivered to him four hours before the paying off or discharge a full and true account of the wages earned, and of all deductions therefrom. The account must be in a form approved by the Board of Trade and no deduction will be allowed unless it is included therein, or is in respect of something that happened after the account was delivered. The seaman may, however, give notice to dispense with the account (Sections 409-412, M.S.A., 1894); as to method of calculating wages and profits, see Sections 383 and 388).

A superintendent may decide disputes as to wages, deductions, terms of engagement, discharge, provisions supplied to crew, etc. Such decision may be enforced by a justice of the peace as if it were an order made by a Court of Summary Jurisdiction (Section 387, M.S.A., 1894).

The provisions of the Act relating to discipline are, though with some differences, similar to those for ordinary ships (see pp. 27 and 28 above). Sections 376, 379-382.

SPECIAL PROVISIONS RELATING TO CERTAIN SWEATED INDUSTRIES

The Trade Boards Act 1909.—By this Act certain industries in which wages are abnormally low are now dealt with by Trade Boards. The industries to which the Act applies in the first place are specified in the Schedule to the Act, and the Board of Trade may, by a Provisional Order (which must be subsequently confirmed by Parliament), extend the Act to any other trade in which the rate of wages is exceptionally low. On the other hand, if the conditions of any trade within the Act are so changed as to render the application of the Act unnecessary, that trade may be removed out of the operation of the Act (section 1).

For the list of trades to which the Act now applies see the Schedule to the Act and The Trade Boards Provisional Order Confirmation Act 1913.

In the trades thus specified wages are fixed by Trade Boards, and it is the duty of the Board of Trade to establish, when practicable, one or more Trade Boards for each of these trades or for any branch thereof (section 2). As to the constitution of these boards see sections 11–13.

A trade board is bound to fix minimum time-rates, but has a discretionary power as to fixing minimum rates for piecework. The rates may be fixed to apply to a trade as a whole, to any special process, to any class of workers, or to any special area. Any employer is entitled to obtain from a Trade Board a special minimum piece-rate for persons employed by him on work for which a time-rate, but no piece-rate, has been fixed (section 4).

A trade board is bound to give notice of any minimum rate which it proposes to fix and to consider any objections which may be laid before it within three months after the issue of such notice. It must also give notice of any rate which it has fixed (section 4).

The mere fixing of a minimum rate by a trade board does not make it obligatory. Six months must elapse

from the date on which the board has given notice of a minimum rate fixed by it, and an order must be issued by the Board of Trade making it obligatory (section 5).

During the period between the fixing and notification of a minimum rate by a trade board and the coming into operation of an obligatory order of the Board of Trade the minimum rate operates in the following limited manner—

1. In the absence of a written agreement to the contrary the employer is bound to pay at least the minimum rate.

2. Any employer may give notice to the trade board that he is willing that the rate should be obligatory on him. If he does so he will be in the same position as if an obligatory order were in force. Every trade board must keep a register of such notices open to public inspection free of charge.

3. Only employers who have given such notice are eligible for contracts with Government departments or local authorities (section 7).

Where a minimum rate has been fixed or made obligatory, any employer paying less is liable on summary conviction to a fine not exceeding £20 for each offence and to a fine not exceeding £5 for each day the offence continues after conviction. He may also be ordered to pay the employee any balance required to bring the wages up to the minimum. If no such order be made the employee may sue for it in the usual way. The minimum rate must be paid clear of all deductions, and in the event of a dispute the onus is on the employer to prove that he has not contravened the Act. An agreement for wages at less than the minimum rate is void (section 6).

An infirm worker who cannot earn wages at the minimum time-rate, and whose case cannot be suitably met by employing him on piecework, may be exempted by the trade board from the operation of the minimum rate (section 6 (3)).

SPECIAL STATUTES RELATING TO MINERS : MINES TO
WHICH THE COAL MINES REGULATIONS ACTS
APPLY

The various Coal Mines Regulation Acts apply to mines of coal, stratified ironstone, shale, and fire-clay (see Coal Mines Regulation Act, 1887, Section 3 and Coal Mines Act, 1911, Section 1). Mines of any other description come within the scope of the Metalliferous Mines Regulation Acts, 1872-75.

No boy under fourteen and no woman or girl of any age may be employed underground. Boys and girls of thirteen and women may be employed above ground ¹ in connection with a mine, but not for more than ten hours per day or fifty-four hours per week, and not between 9 p.m. and 5 a.m., nor on Sundays, nor after 2 p.m. on Saturdays. And they are not to be employed in moving railway wagons or anything so heavy as likely to cause injury. Not more than five hours at a stretch may be worked without a meal interval of half an hour, and if more than eight hours are worked in one day, at least an hour and a half must be allowed for meals.

A register of all boys between fourteen and sixteen employed underground, and of all boys between thirteen and sixteen and all girls and women employed above ground must be kept in the offices at the mine (C.M.A., 1911, Sections 91-95).

The wages of all persons employed in or about a mine shall be paid weekly if a majority of such persons desire it. On payment a statement with particulars of how the amount is arrived at shall be given to each person. Wages must not be paid in a public house or on any public house premises (C.M.A., 1911, Section 96).

Checkweighers.—Where the amount of wages in a mine to which the Coal Mines Regulation Acts apply depends upon the amount of mineral gotten, the payment must be

¹ The Coal Mines Regulation Act 1908—the “Eight-hours Act”—only applies to work underground (section 1 (1); see p. 40).

according to the actual weight gotten. Deductions (previously agreed upon) may be made in respect of stones or substances other than the mineral in question; or in respect of tubs, baskets, or hutches improperly filled (where they are filled by the getter, or his drawer, or some one immediately employed by him). The deductions must be determined in some manner agreed upon, or by some person appointed by the owner together with the checkweigher. In the event of any difference of opinion the matter must be settled by a third person mutually agreed upon, or by a chairman appointed by the Court of Quarter Sessions for the district (C.M.R.A., 1887, Section 12).

Employees in a mine paid according to the weight of mineral gotten may, at their own cost, station a checkweigher at each place appointed for weighing and determining deductions, in order to take a correct account of the weight of minerals, or to determine correctly the deductions. The owner must afford facilities to the checkweigher for enabling him to discharge his duties: *e. g.* facilities for examining and testing weighing-machines, and checking and taring of tubs and trams; also a shelter capable of holding two persons, a desk or table, and a sufficient number of weights for testing the weighing-machine. An owner who refuses such facilities is guilty of an offence under the Acts.

The absence of a checkweigher from his post is not to be a reason for interrupting or delaying weighing or determining of deductions, unless he had reasonable grounds for believing that weighing and deductions would not take place in his absence.

A checkweigher may give to any workman an account of the mineral gotten by him, or information with respect to weighing, or the weighing-machine, or the taring of tubs or trams, or deductions, or any other matter within the scope of his duties. But he is not authorised to impede or interrupt the working of the mine, or interfere with the weighing, or with the workmen, or with the management of the mine. If he does any of these things

or (at the mine) does any other thing to the detriment of the owners beyond what he is entitled to do, he may be removed by a Court of Summary Jurisdiction on the complaint of the owner.

If the employer's checkweigher interferes with the employees' checkweigher, or improperly interferes with the machine or tare in order to prevent a correct account of taring or weighing, he is guilty of an offence.

If the owner, or any one acting for him interferes with the appointment of a checkweigher, or attempts by threats, bribes, promises, notice of dismissal, or in any other way, to exercise improper influence in respect of such appointment, he is guilty of an offence. The owner is bound to afford proper facilities for the holding of the meeting if the persons making the appointment cannot obtain a suitable meeting place (C.M.R.A., 1887, Section 13; Coal Mines (Weighing of Minerals) Act, 1905, Section 1 (4); Coal Mines (Checkweigher) Act, 1894, Section 1).

A checkweigher may be appointed by a majority of the employees in the mine who are paid according to the weight of mineral gotten by them, a ballot being taken for the purpose. The persons entitled to vote include not only those in charge of working places, but also all holers, fillers, trammers and other persons who are paid according to the weight gotten.

It is the duty of the person presiding at the meeting for appointing a checkweigher to deliver to the owner or his agent or manager a statutory declaration¹ certifying the appointment. The declaration must state whether the appointment was made by a ballot of the employees, and if not it must name the persons by whom or on whose behalf the appointment was made.

¹ *Statutory Declaration*.—In order to prevent the unnecessary use of oaths in non-judicial proceedings, a written statement of facts may be signed and declared to be true before a magistrate, notary public, or commissioner of oaths. The form of declaration is as follows: "I, A. B., do solemnly and sincerely declare that . . . [*here follows the statement*] . . . and I make this solemn declaration believing the same to be true and by virtue of the Statutory Declaration Act 1835."

A checkweigher who is appointed by a majority of the employees is deemed to be appointed on behalf of them all, and each of them is legally bound to pay his due proportion of the checkweigher's wages. Workmen engaged at the mine since the appointment are equally liable to contribute. And a checkweigher so appointed must be removed in the same way.

Persons in charge of working places, or acting as holers, fillers, trammers, or brushers, but employed by a contractor who is himself paid by weight, may take part in the election of a checkweigher even though the contractor does not pay them by weight. But the contributions to the checkweigher's wages must be paid by the contractor.

If the majority of the employees agree the owner may deduct from their wages their contributions towards the checkweigher's wages and may pay them to the checkweigher. The checkweigher's wages are to include any expenses properly incurred by him in carrying out the work under the Act.

Deputy checkweighers may now be appointed to act in the absence (for reasonable cause) of checkweighers.

When it is intended to appoint a checkweigher or deputy checkweigher a notice must be given to the employees concerned specifying the time and place of appointment, and equal facilities for voting, whether by ballot or otherwise, shall be given to all.

See C.M.R.A., 1887, Section 14 and Coal Mines (Weighing of Minerals) Act, 1905, Sections 1-3.

Provisions for Safety, etc.—The workmen employed in a mine may appoint at their own cost two of their number, or any two persons (not being mining engineers), who are or have been practical miners with five years' underground experience, to inspect the mine. These are to be free to go once a month into every part of the mine. Where there has been an accident they may take with them a legal adviser or a mining or electrical engineer (Coal Mines Act, 1911, Section 16).

Where the safety of persons employed in a mine or

in a part of it is endangered by a failure to carry out the provisions of the Coal Mines Act, 1911, relating to safety, an injunction may be obtained from the High Court prohibiting the working of the mine or part of it.

And where any part of the machinery or plant in a mine is in such a condition or position as to be dangerous to life or limb, a Court of Summary Jurisdiction may, on complaint by an inspector, prohibit its use (C.M.A., 1911, Sections 107-108).

Amongst the provisions of the Coal Mines Act, 1911, for the prevention of explosions the following specially concern the miners themselves—

In cases where safety lamps are required to be used a safety lamp must not be unlocked nor (unless it is an electric hand lamp) relighted except at an appointed lamp station, and no unauthorised person shall have in his possession any contrivance for relighting or opening a safety lamp. No person is to remove any part of a safety lamp whilst it is in ordinary use.

A person to whom a safety lamp is given out is guilty of an offence if it is damaged by his neglect or default.

In cases where safety lamps must be used no person shall have in his possession any cigar, cigarette, pipe or contrivance for smoking, or any lucifer match or any apparatus for producing a light or spark except so far as may be authorised for shot-firing or relighting lamps. Persons employed below ground may be searched before commencing work in order to ascertain whether they have any of these things in their possession; the searcher must, however, if required, allow himself first to be searched by some two workmen employed in the mine. It is an offence to be found with any of the prohibited articles in one's possession or to refuse to allow one's self to be searched (C.M.A., 1911, Sections 34-35).

No person may work as a "getter," except under the supervision of a skilled workman, until he has worked under such supervision for two years, or has been employed for two years in or about the face of the

workings. No skilled workman shall supervise more than one inexperienced workman (C.M.A., 1911, Section 73).

The owner must provide accommodation and facilities for taking baths and drying clothes at the mine if—

1. A majority, ascertained by ballot of two-thirds of the workmen employed there, desire it and undertake to pay half the cost of maintenance.

2. The estimated total cost of the maintenance does not exceed 3*d.* per week for each workman liable to contribute. (For further details on this matter see C.M.A., 1911, Section 77.)

Schedule III of the Coal Mines Act, 1911, contains regulations for the care and treatment of horses and other animals in mines. These are worthy of study. (See also Section 109.)

METALLIFEROUS MINES

The following provisions of the Metalliferous Mines Regulation Act, 1872, may be mentioned—

The underground employment of boys under thirteen, and of girls and women of any age is prohibited. The employment of boys between thirteen and sixteen underground is restricted to fifty-four hours per week and to ten hours per day. A register is to be kept of all boys between thirteen and sixteen employed below ground. The employment of women and girls above ground is sanctioned, not expressly, but indirectly by the requirement that all women, young persons and children employed above ground shall be entered on the register (See sections 4, 5 and 6, as amended by the Act of 1900).

As in the case of other mines wages must not be paid on licensed premises (section 9).

Where more than twelve persons are ordinarily employed below ground, accommodation for changing and drying clothes is to be provided near the principal entrance to the mine, and not in the engine-house or boiler-house (section 23 (16)).

THE COAL MINES (MINIMUM WAGE) ACT 1912

This Act applies to underground workmen in coal mines, including mines of stratified ironstone. Under the Act there are in existence twenty-two "Joint District Boards," whose functions are: (1) to settle general minimum rates of wages for their districts; (2) to settle general district rules for their districts. Every board must be recognised by the Board of Trade, and to secure recognition it must fairly and adequately represent both workmen and employers, and must have an independent chairman appointed by agreement between the members, or, in default of agreement, by the Board of Trade.

The payment of the minimum rate fixed by a Joint District Board is not compulsory in the cases of aged and infirm workmen, and workmen recovering from illness, or from the effects of an accident; nor is an irregular or inefficient workman entitled to be paid at the minimum rate. The conditions under which such exclusions are made must, however, be laid down in the general district rules, which must also make provision for settling any questions which may arise as to the exclusion of any workman.

A special minimum rate, higher or lower than the general minimum rate for the district, may be established for any group or class of mines where exceptional conditions prevail, and special district rules, more or less stringent than the general rules for the district, may be applied in such cases. In settling any minimum rate the board must have regard to the average daily rate of wages already paid (sections 1 and 2 and schedule).

The minimum rate of wages and the district rules may be varied at yearly intervals on the application of either party, or by mutual agreement at any time (section 3).

Payment of the minimum rate is secured by making it an implied term of every contract of employment, which may be enforced in the usual way by a civil action (section 1).

THE EIGHT-HOURS DAY IN COAL MINES

By the Coal Mines Regulation Act 1908, Section 1 (1) a workman is not to be below ground in a mine for the purpose of his work, and of going to and from his work, for more than eight hours in any consecutive twenty-four hours.

In the case of workmen working in a shift the eight hours are reckoned from the time when the last workman in a shift leaves the surface to the time when the first workman in the shift returns to the surface (section 1 (2)).

In any mine the time allowed by the Act may be extended by the owner not more than one hour a day for sixty days in the year (section 3 (1)).

It is not a contravention of the Act for a workman to be below for the purpose of—

- (a) Rendering assistance in the event of accident.
- (b) Meeting any danger or apprehended danger.
- (c) Dealing with any emergency or work uncompleted through unforeseen circumstances, which requires to be dealt with without interruption in order to avoid serious interference with ordinary work in the mine.

And stallmen engaged in the process of taking down top coal in square or wide work in the thick coal of the South Staffordshire District, may, without contravening the Act, remain below ground so long as their presence in or near the stall is necessary to ensure safety (section 1 (2)).

A repairing shift of workmen for the purpose of avoiding working on Sunday may commence their Saturday's work at any time after eight hours have elapsed since the termination of the last period of work (section 1 (6)). There is also an exception to meet the case of workmen engaged in sinking a pit or driving a cross-measure drift (section 1 (7) (b)).

The times at which lowering is to commence and be completed, and raising is to commence and be completed, must be fixed for each shift by the owner (section 1 (3)).

The intervals between commencing and completing the lowering and raising of each shift must be approved by the inspector. But it may be extended temporarily in the event of any accident which interferes with the lowering or raising (section 1 (4)).

Firemen, examiners, deputies, onsetters, pump-minders, fanmen and furnacemen may remain below ground for nine and a half hours. Other officials of the mine and mechanics, horse-keepers and persons engaged solely in surveying or measuring do not come within the Act (section 1 (7)).

The workmen in a mine may, at their own cost, appoint and station one or more persons at the pit head to observe the times of lowering and raising. When this is done the provisions of the Acts relating to checkweighers shall apply (section 2 (2)).

The owner must station one or more persons at the pit head to direct the lowering and raising, and a register must be kept containing particulars of the times of lowering and raising, and of cases in which any man is below ground for more than the time allowed by the Act, and the cause thereof (section 2 (1)).

Workmen, no less than employers, are liable to penalties if they contravene the provisions of the Act. But if a workman is below ground for a longer time than the Act allows he is not guilty of an offence if he proves that means for returning to the surface were not available (section 7 (1)).

The operation of the Act may be suspended in the event of—

- (a) War.
- (b) Imminent national danger or great emergency.
- (c) Grave economic disturbance due to a shortage of coal (section 4).

CONTRACTS IN RESTRAINT OF TRADE

The law relating to contracts in restraint of trade is of importance to trade unionists for three reasons—

1. The fact that the rules of a society constitute a contract in restraint of trade may be an important factor in deciding whether the society is a trade union or not. (See pp. 121 and 122.)

2. In the case of certain trade unions the restraint on trade imposed by the rules, as a whole, is of such a nature that the law will not enforce any of the contracts made by the union with its members.

3. The collective agreements made between employers on the one hand and trade unions or bodies of employees on the other, have frequently to be considered in the light of the law concerning restraints on trade.

A contract in restraint of trade is one which impedes, or tends to impede, the free course of trade. Thus if A buys B's business and B agrees not to set up business again in the same town for a certain period the contract is one in restraint of trade. Similarly if a doctor engages an assistant and the latter agrees not to practise in the district for a certain time after the expiration of the engagement; or if a number of manufacturers agree with one another not to sell their goods below a certain price; or if a wholesale dealer or manufacturer in selling goods to retail tradesmen obtains from them promises not to sell the goods below a certain price.

The law on the subject of restraints of trade is vague and uncertain. Every contract in restraint of trade is not illegal. The contract is only illegal if it is contrary to Public Policy, *i. e.* if the restraint is so unreasonable that it would be contrary to the general interests of the community to enforce it and contracts of like nature.

There are no hard-and-fast rules for deciding whether a given contract in restraint of trade is contrary to Public Policy. In each individual case the question is one to be settled by the Court which hears the case. But the following is a useful test: If the restraint is such as only to afford a fair protection to the interests of the party in whose favour it is imposed, and not so large as to interfere with the interests of the public, it will not be

considered illegal. In an American case decided in 1837 the judges gave several reasons why contracts in restraint of trade are contrary to Public Policy. The following are some of the reasons given—

1. Such contracts injure the parties making them because they diminish their means of making a livelihood, and tempt improvident persons, for the sake of immediate gain, to deprive themselves of the power to make future gains. Such persons are exposed to imposition and oppression.

2. They tend to deprive the public of the useful services and talents of individuals.

3. They discourage industry and enterprise and diminish the sum total of the wealth of the community.

4. They prevent competition and enhance prices, thus exposing the public to all the evils of monopoly.

The following are cases in which, though the contract involved restraint of trade, the restraint was not so unreasonable as to make the contract illegal.

A boy of nineteen was engaged as a milkman at a wage of 21s. per week. He agreed that, on leaving the employment, he would not, for two years, enter into business on his own account, nor take service with any other milk-seller within a radius of five miles: Held, that the agreement was binding (*Evans v. Ware* [1892], 3 Ch. 502).

A number of traders in the city of Cork formed an association and agreed with each other not to sell certain liquors within a radius of sixteen miles from Cork at less than a fixed price. Any member might, however, withdraw from the agreement by giving six months' notice: Held, that this agreement was binding (*Cade v. Daly* [1910], 1 Ch.D. (Ir.) 306).

An inventor and manufacturer of guns and ammunition, who supplied military materials to various governments all over the world, sold his business to a company and agreed that, for a period of twenty-five years, he would not engage, either directly or indirectly, in the business of a

gun and ammunition maker: Held, that he was bound by this agreement (*Nordenfelt v. Maxim-Nordenfelt Gun and Ammunition Co.*, 14 T.L.R. 487).

In the following cases the restraint was so unreasonable as to make the contract illegal—

A traveller, entering the service of a brewery company, agreed that he would not, during his service with them and for two years after, sell, procure orders for, or recommend anywhere, any other Burton ale than that brewed by the company: It was held that the agreement was not binding on the traveller (*Allsopp v. Wheatcroft*, L.R. 15 Eq. 59).

A number of mineral water manufacturers agreed with each other not to sell mineral waters anywhere at less than 9d. a dozen. The period of the agreement was ten years: Held, that the agreement was not binding (*Urmston v. Whitelegg*, 63 L.T.N.S. 455).

In the case of another association of mineral water manufacturers one of the rules of the association provided that no member should employ any traveller, carman, or outdoor employee who had left the service of another member, without the written consent of his employer, until after the expiration of two years: Held, that this rule was not binding on any member (*Mineral Water Bottle Exchange, etc., Society v. Booth*, 3 T.L.R. 740).

In the first five of the above cases the purpose of the restraint was, in itself, quite unobjectionable, viz. the protection of the interests of the party imposing it. In the first three both the time and the area were reasonable. In *Allsopp's* case the area "anywhere" was unreasonably large as compared with a mere five-mile radius in *Evans' case*. In *Nordenfelt's* case the whole world was not an unreasonably great area in view of the fact that the company's customers were mostly nations and not individuals. And, considering the nature of the goods sold and the price paid for the business, the limitation of twenty-five years was a reasonable one. The ten years' limit of time and the unlimited area in *Urmston v. Whitelegg*

are in marked contrast with the six months' limit and the sixteen miles' radius in *Cade v. Daly*.

With regard to Booth's case it would appear that an agreement between two persons to boycott a third cannot, under any circumstances, be other than an unreasonable restraint.

A few typical trade union rules are now given as illustrating reasonableness and unreasonableness in trade restraint—

Bristol Trade and Provident Society. Rule 7 (2) (4). Should work be offered at the current rate of wages to any member receiving travelling relief, unless it be to fill the place of those fighting for better conditions, and he refuses to accept it, his allowance shall be at once stopped, and his card given up.

Rule 40, section 1. Members paying to the trade fund are to be entitled to dispute pay, travelling relief, etc.

Rule 40, section 6. No officer or member of this society shall be authorised or permitted to take any active interest in, aid in any way, or otherwise assist any trade movement except in his private capacity.

It was held that these objects were not illegal and that the rules amounted to no more than an insurance of the members against the consequences of a strike. The Master of the Rolls pointed out that there was nothing in the rules which authorised the calling out of members or the assisting of a strike. Indeed, section 6 showed that any such action was expressly prohibited (*Gozney v. Bristol Trade and Provident Society* [1909], 1 K.B. 901).

It may be mentioned here that several eminent judges have recently expressed the view that the promotion of strikes is not in itself an illegal restraint of trade, though it may, of course, be attended by circumstances, such as intimidation, etc., which make it illegal.

The rules of the Amalgamated Society of Railway Servants were considered by the Court of Appeal in the case of *Osborne v. Amalgamated Society of Railway Servants*, No. 2 [1911], 1 Ch. 540, and were held by the Court

not to amount to an unreasonable restraint on trade. These rules should be carefully studied as a type to be copied (if it is desired to bring the society's contracts with its members within the jurisdiction of the Courts) or to be avoided (if it is desired to exclude the society's affairs as much as possible from the jurisdiction).

By Rule 13, section 3, the executive committee are authorised to sanction trade movements for the purposes of improving or preventing deterioration in the conditions of labour. The sanction of the executive committee must be obtained before any step in connection with a trade movement is taken, but where any movement takes place without its sanction the executive committee may endorse it and sanction its continuance. Any member striking without the sanction of the executive committee or in breach of his contract of service, or doing any other unlawful act or acts in contravention of the rules, is not entitled to the benefit of the protection fund. Where every effort for a pacific settlement of a trade dispute fails, the executive committee may issue notice papers to the men, and if two thirds of these are signed the executive committee may fix a day for handing them to the company or companies. And upon a withdrawal from work in accordance with these notices the executive committee must use every lawful means to assist the men in the struggle, which is to be directed by the general secretary.

It was held that there was nothing in this rule which was in restraint of trade. The Master of the Rolls observed that there was no provision for calling out members in the event of a strike and that the above rule did not even indirectly amount to such a provision, for the executive committee can only sanction a strike as distinguished from ordering it.¹ There was no taint of illegality in the voluntary act of signing notices on the part of the two-thirds majority, for there was nothing to prevent a man who had handed in his notice from resuming

¹ See also Russell's case, p. 48 below.

work. He would, of course, cease to be entitled to strike pay, that is all. There was no intention to call out or put pressure upon the minority who did not sign.

In the case of *Cullen v. Elwin* (19 T.L.R. 426), the following rules were held to be an illegal restraint on trade—

1. A rule making an equal division of work compulsory in all shops during slack seasons.

2. A rule forbidding the dual system of time-work and piece-work in the same shop.

3. A rule forbidding outworking except by special permission of the society.

4. A rule limiting the hours of labour to fifty-four per week and prohibiting overtime except in cases of necessity.

In *M'Kernan v. United Operative Masons' Association* (1 R. 4th Series, 453), it appeared that among the rules relating to strikes was one which provided that a list should be printed each half year showing the names of all members who had "worked in opposition on strikes or otherwise." Each collector was to receive a copy gratuitously. This rule was considered to be in restraint of trade, as the list was clearly published in order to put pressure on the members.

The rules of a *Journeymen Hatters' Fair Trade Union* limited the number of apprentices and journeymen employed, and forbade its members to work in any shop where non-unionists were employed: Held, that they were an illegal restraint on trade (*Rigby v. Connol*, 14 Ch. D. 482).

The following rules of the *Amalgamated Society of Carpenters and Joiners* have also been held to be an unlawful restraint on trade—

Members who, on the recommendation of the managing committee, refuse to work with non-union men are entitled to trade privileges.

Members withdrawn from their employment on the instruction of the managing committee are entitled to trade privileges.

Members may be fined, suspended, or expelled for refusing to comply with the decision of the managing committee; wilfully violating the recognised rules of the district; taking a sub-contract or piece-work; working for a sub-contractor or piece-worker; fixing, using, or finishing work which has been made under unfair conditions, etc.

Another rule of this society provided that a branch or district should not be allowed to strike without first obtaining the sanction of the executive council, and the executive council was to have full power to declare a strike closed. This last rule does not constitute a restraint on trade. It does not give the council power to order a strike, it rather gives them power to prevent strikes (*Russell v. Amalgamated Society of Carpenters and Joiners* [1912], A.C. 421).

In the case of *Hilton v. Eckersley*, 25 L.J.Q.B. 199, eighteen cotton manufacturers of Wigan, in order to resist the action of certain trade unions of workmen, agreed with each other to pay such wages and work for such periods as the majority should decide, and to abide by the directions of the majority in the fixing of the hours of labour, the suspending of work, and the discipline and management of their respective establishments: Held, that the agreement was an unreasonable restraint on trade and therefore not binding. (For other examples of reasonable and unreasonable restraints on trade, see *The Law Relating to Trade Unions*, Chapter II and Supplement thereto, pp. 15-20).

When a contract in restraint of trade is said to be illegal it is illegal only in the sense that the law will not enforce it if an action is brought by either party against the other. Such a contract is not necessarily criminal or wicked, it may even be commendable; *e. g.* an agreement amongst the workmen in any trade to share work equally in slack seasons, or the agreement in the case of *Hilton v. Eckersley*, above-mentioned. The parties to such agreements are quite free either to perform them or not to perform them. The law does not interfere with them.

This holds even with respect to an agreement to boycott, as in Booth's case, p. 44 above. As to the possible liability of the boycotters under the law of conspiracy, see p. 100 below.

ENFORCEMENT OF TRADE UNION CONTRACTS

As has already been pointed out on p. 1, the agreements by members of a trade union—not to work for less than a standard wage, not to work for more than a certain number of hours per week, not to work with non-unionists, not to handle materials made under unfair conditions, not to work on piece-rates, and various other restrictive conditions—are mere voluntary agreements not intended by the parties to them to be legally binding. And even if they were intended to be legally binding it is clear that the Courts would refuse to enforce them as being in restraint of trade.

The agreements in trade union rules about which legal difficulties are most likely to arise are: (1) agreements on the part of the society to pay benefits to its members; (2) agreements on the part of the members to pay subscriptions, fines and other moneys to the society.

Previous to the year 1871 most trade unions, though not all, were illegal societies, because their purposes were in restraint of trade. The Courts, therefore, would not assist trade unions and their members in enforcing their rights against each other, just as it would not assist the members of a band of robbers in carrying out their arrangements for the division of the spoil. This attitude of the Courts, though not complimentary to the unions, was not without its practical advantages. The main purpose of most of the unions was to protect the trade interests of their members; the provision of sick pay, superannuation allowances, funeral grants, etc., was a secondary and quite subsidiary matter. All the subscriptions of the members went into one fund, and out of this fund all the benefits were paid, strike pay as well as the purely provident benefits. It was the recognised policy of the unions

that, in a time of industrial dispute, the whole of their funds must, if necessary, be devoted to one end, viz. the support of the men on strike until a satisfactory arrangement with the employers was obtained.

If the members' rights to benefit had been capable of legal enforcement, it would have been open to any member, or group of members, to obtain an injunction against a society involved in a dispute, forbidding the payment of strike pay out of such portion of the fund as was necessary to cover the society's liabilities for other benefits. This, of course, would have seriously crippled the society at the outset of the struggle.¹

The logical outcome of the doctrine of the illegality of trade unions was so great an advantage to trade unionism as a whole that when the Act of 1871 legalised trade unions, it was considered advisable to retain this principle of the old law. Thus sections 2 and 3 of the Act declare that a trade union and its agreements shall no longer be unlawful merely because its purposes are in restraint of trade, but by section 4 nothing in the Act is to render certain specified agreements legally enforceable. These agreements are as follows—

1. Any agreement between members of a trade union as such, concerning the conditions on which any members, for the time being, shall or shall not sell their goods, transact business, employ, or be employed. (This provision covers the voluntary agreements mentioned on pp. 1 and 49).

2. Any agreement for the payment by any person of any subscription or penalty to a trade union.

3. Any agreement for the application of the funds of a trade union—

- (a) To provide benefits to members; or,

¹ In the vast majority of cases trade unions pay out regularly the provident benefits agreed upon, and cases of arbitrary or capricious refusal to pay are very rare. For a fuller discussion of this matter see *The Theory and Practice of Trade Unionism*, pp. 33–35, or Webb's *Industrial Democracy*, the chapter on "Mutual Insurance," pp. 152–172. That the courts are also quite familiar with this aspect of the question is shown by the numerous judgments. See *The Law Relating to Trade Unions*, pp. 3–4.

(b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or,

(c) To discharge any fine imposed upon any person by sentence of a court of justice.

4. Any agreement made between one trade union and another.

5. Any bond to secure the performance of any of the above-mentioned agreements.

The five classes of agreements thus mentioned are, so far as enforcing them is concerned, left by the Act of 1871 in the position they occupied before the Act was passed. Section 4 does not make them illegal, and the Act does not enable a court to enforce them directly if they could not have been enforced before 1871. Any agreement coming within the description of section 4, which was lawful and enforceable before the passing of the Trade Union Act 1871, is still lawful and enforceable.

When a trade union is sued by a member for payment of benefit the defence usually set up is that the society is an illegal society and its contracts are not enforceable. The use of the term "illegal society" is misleading, for the Act of 1871 made trade unions legal. The real meaning of the phrase, when used in this connection, is that the society would have been illegal¹ at Common Law and its contracts not enforceable; and therefore, in accordance with section 4 of the Act of 1871, an agreement by the society to provide benefits remains unenforceable.

A trade union whose rules regulating trade are so mild as not to amount to unreasonable restraint, is little different from an ordinary friendly society, and even before 1871 would have been a legal society. It can therefore be sued for benefit. Thus, in *Swaine v. Wilson*, 6 T.L.R. 121, a member of the Bradford Powerloom Overlookers' Friendly

¹ In the following pages this word when used in this technical sense, will be printed in inverted commas, thus: "illegal." Similarly with "legal."

Society successfully sued the officers of the society for £50 benefit due to him under the rules. The only rules challenged as being illegal restraints on trade were the following—

Rule 42. If disagreeable circumstances arise between a member and his employer or manager, the committee may give him permission to leave the situation and claim the benefits of the society.

Rule 47. Members knowing of a vacant situation, and not informing fellow members who are out of a situation, or want a change, are to be liable to a fine.

Rule 48. A member, on applying for a situation at a place where a fellow member is working, must first ask him if there is about to be a vacancy. A penalty of 5s. or 10s. is imposed for not doing so.

Rule 49. The committee may permit a member to refuse to teach a person his trade, and if, as a result, he lose his situation, he shall be entitled to an amount equal to his wages until he finds employment.

Rule 66. Members must not apply for situations where the advertisement does not state the name and address of the employer. A fine of 10s. is imposed for breach of this rule.

The Master of the Rolls said that these rules were not intended to be in restraint of trade, though they might, if carried out, perhaps restrain trade to a certain extent. He considered they were “legal.”

Where some of the rules of a society are “legal” and others are “illegal,” the “legal” ones will be enforceable in the Courts, while those that are “illegal” will not. But if the “legal” and the “illegal” rules are so closely connected that it is impossible to enforce the former without enforcing the latter, the Court will refuse to enforce the “legal” rules. A society in which the “legal” and “illegal” objects are inseparably connected is thus often said to be an “illegal” society.

Two tests may be applied to determine whether the “legal” and the “illegal” rules are separable—

1. Does the breach of an "illegal" rule by a member involve loss of benefits under the "legal" rules? If so, they are not separable. The most usual case of this kind is where the rules provide for the suspension or expulsion of a member who refuses to comply with the trade rules of the society. As such suspension or expulsion involves loss of benefit, it is clear that the benefit provisions of the society are an indirect, though effective, means of enforcing the trade rules. See the case of *Russell v. Amalgamated Society of Carpenters and Joiners*, p. 48 above. The society was held to be an "illegal" society, and the widow of a member who sued the society for arrears of sick benefit and superannuation due to her husband could not enforce her rights.

2. The other test of the separability of the "legal" and "illegal" rules is the question whether there are two separate funds for trade and benefit purposes respectively.

A brief summary will now be given of the various cases in which actions have been brought against trade unions or by them, for the legal enforcement of contracts contained in their rules.

The case of *Russell v. Amalgamated Society of Carpenters and Joiners* has already been mentioned. A man who had been a member of the society for forty years became insane and was thereby entitled to sick benefit, or alternatively to superannuation benefit. The society gave sick pay until he was removed to an infirmary, when payment was discontinued. On his death the widow sued the society for all the moneys which had accrued to her husband from the time payments were discontinued until his death. As we have seen, the action failed because the society was an "illegal" one. One argument put forward on the widow's behalf was that, though Section 4 of the Trade Union Act 1871 prevented a member from taking legal proceedings to enforce payment of benefits, the prohibition did not apply to his legal representative. But Phillimore J. said that the section applied quite as

much to a representative of a deceased member as to the member himself.

In *Winder v. The Governors, etc., of Kingston-upon-Hull Corporation for the Poor*, 20 Q.B.D. 412, a member of a trade union became an inmate of a borough asylum and the governors of the asylum obtained a magistrate's order against the trade union for the payment of benefits due to the member. But on appeal this order was quashed by the High Court.

Similarly, if a member of a trade union were to assign to another person his rights to a sum of money representing benefits due from the union, section 4 of the Act of 1871 would apply to the assignee just as much as to the member himself.

By Section 10 of the Trade Union Act 1876 (amended by Section 7 of the Provident Nominations and Small Intestacies Act 1883) a member of a trade union may, in writing, nominate some person to receive on his death any sum not exceeding £100 payable in respect of the member's death out of the funds of the union. But this provision does not enable the nominee to sue for the money in a court of law. Thus, in *Crocker v. Knight* [1892], 1 K.B. 702, a member of a trade union by his will appointed a certain person as his executrix and nominated her to receive his funeral money from the society. On his death the society refused to pay and the executrix sued the secretary for payment. It was held that the Court had no jurisdiction in the matter.

In *Burke v. Amalgamated Society of Dyers* a member of the society became insane and was removed to a lunatic asylum. His insanity being a sickness which entitled him to benefit under the rules, the society made payments for nearly a year. The rules relating to sick pay were then amended so as to exclude from benefit any member confined in a lunatic asylum. There was a rule of the society which empowered a two-thirds majority of the members to alter the rules, and the amendment in question was made in accordance with this rule. It was held

that, as a result of the amendment, the society was entitled to discontinue payments. The member, by assenting to the rules as a whole when he joined the society, had agreed to be bound by any alteration of the rules which might be made in accordance with the rules ([1906] 2 K.B. 583).

But unless the rules of a society expressly sanction the making of amendments no amendment is legal, not even if a majority of the members consent to it (*Harington v. Sendall* [1903], 1 Ch. 921; see also p. 125).

In *Mullett v. United French Polishers' Society*, 91 L.T. 133, certain members of a trade union were fined for agreeing with an employer to work with non-union men. They sued the society asking for an injunction to restrain it from levying the fine. It was held that the Court had no jurisdiction to interfere.

It will be remembered that an agreement to pay a subscription or a penalty to a trade union is one of the five classes of agreements enumerated in section 4 of the Act of 1871 (see p. 50 above).

In *Gozney v. Bristol Trade and Provident Society* [1909], 1 K.B. 901, a member of a society receiving sick pay was fined 2s. 6d. for being out after six o'clock in the evening contrary to the rules. As he had been ordered by his doctor to be out-of-doors as much as possible, he brought an action against the society asking the Court to declare: (1) that he was right in carrying out his doctor's orders; (2) that the society was wrong in fining him; (3) that the fine must be returned. As the society was a "legal" one (see p. 45 above) the Court assumed jurisdiction and sent the case back to the County Court for trial.

In *Baker v. Ingall* [1912], 3 K.B. 106, a moulder was injured while at work and was, for a time, thought to be permanently incapacitated. Under one of the rules of his trade union he received £100, and under another rule he signed an agreement binding himself to refund the money in the event of his returning to work. More than two years later he was well enough to resume work, as a

core-maker at a lower wage, and as he refused to return the £100 the society sued him for it. The English Court of Appeal held that the agreement was "one for the application of the funds of a trade union to provide a benefit for a member" and came within Section 4 of the Trade Union Act 1871. And as the society was an "illegal" one the claim could not be enforced.

The Scottish case of *Wilkie v. King*, 48 Sc. L.R. 1057, was almost identical, but the Court of Session took the view that whether the society was "illegal" or not the case did not come within Section 4, and they sent it back to the Sheriff Court to decide whether the money should be refunded.

Thus, as regards agreements of this particular type the law in England and Scotland is different until the House of Lords has given judgment on the question.

Many trade unions by their rules now undertake to provide legal assistance for members claiming compensation for injuries under the Workmen's Compensation Act, the Employers' Liability Act, etc. According to the judgment of Ridley J. in *Lees v. Lancashire and Cheshire Miners' Federation*, such assistance is not a benefit within the meaning of Section 4 of the Act of 1871. Consequently whether the society is "legal" or "illegal" such an undertaking may be legally enforced. In *Lees'* case the Federation in *Lees'* name took legal proceedings for compensation against an Insurance Society, but on losing the case they refused to pay a portion of the costs of the other side. As *Lees* was personally liable he sued the Federation and succeeded in compelling it to perform its obligations (*Times*, June 20, 1906).

Partial Jurisdiction of the Courts over Contracts specified in Section 4 of the Trade Union Act 1871.—It is necessary to point out that Section 4 of the Trade Union Act of 1871 in forbidding the enforcement of the specified contracts forbids only the *direct enforcement*. The effect of the word "direct" is to give the Courts considerable jurisdiction over the affairs even of "illegal" societies.

Unfair Expulsion of Members prevented.—In the case of *Osborne v. Amalgamated Society of Railway Servants*, No. 2 [1911], 1 Ch. 540, a member of the society had taken legal proceedings against the society. These proceedings having been successful, he was expelled from the society. He thereupon brought a second action and claimed: (1) a declaration of the Court that the resolution of the Executive Committee expelling him was contrary to the rules; (2) an injunction restraining the society from carrying the resolution into effect. It was held that the action was not a legal proceeding for directly enforcing an agreement to provide benefit, and that Section 4 of the Trade Union Act 1871 did not apply. The Court therefore ordered his reinstatement as a member.

But an expelled member thus restored to membership by an order of the Court does not thereby, of necessity, become legally entitled to benefits. He is in the same position as the other members. If the society is an "illegal" society he cannot legally enforce the payment of any benefit. All that the Court can do is to reinstate him as a member; his claims to the privileges of membership are moral claims and no more.

Where a person has paid his entrance fee and contributions to a trade union, and these have been acknowledged by a responsible official who has given him a card of membership, he is entitled to be a member of the union, and cannot, unless the rules so provide, be expelled by an arbitrary resolution of the executive (*Luby v. Warwickshire Miners' Association* [1912], 2 Ch. 371).

Where the expulsion of a member of a trade union becomes necessary it can only be effectively accomplished if the following conditions are satisfied—

1. The expulsion must be in accordance with the rules of the society.

2. It must be carried out in accordance with the principles of natural justice, *e. g.* the member must be given reasonable notice of the charge against him and must be given a reasonable opportunity for making a defence.

(See *Parr v. Lancashire and Cheshire Miners' Federation*, 29 T.L.R. 235).

The Trade Union Act 1871 does not affect the following agreements—

1. Any agreement between partners as to their own business.
2. Any agreement between employer and employees regarding the employment.
3. Any agreement for the sale of the goodwill of a business.
4. Any agreement for instruction in any profession, trade, or handicraft (section 23).

Misapplication of Trade Union Funds prevented.—If the funds of a trade union are being applied to purposes not authorised by the rules, any member or members may apply to the Court for an injunction restraining the trustees and officers from such misapplication. The granting of such an injunction is not a direct enforcement of the agreement between the members and the union, for, while the Court will not hesitate to forbid the spending of trade union funds on an unauthorised purpose, it will, in cases coming within Section 4 of the Trade Union Act 1871, stop short of ordering them to be applied to even an authorised purpose.

Some of the most famous and most costly law suits have been fought by trade unions on this question. A brief account of some of these will illustrate the application of the principle.

In *Yorkshire Miners' Association v. Howden* [1905], A.C. 256, Howden, a member, brought an action against the association alleging that the trustees and officers had distributed strike pay under circumstances which did not, according to the rules, justify it.

Rule 64 of the society provided that where, in case of a dispute with an employer, the association, in accordance with the rules, sanctioned a cessation from work, the members so ceasing work were to receive strike pay. By Rule 72 no branch was to be allowed to strike or leave off

work except by the sanction of a two-thirds majority of the branch. Rule 65 provided for the allowance of weekly strike pay in cases where members were thrown out of work in consequence of any action legally taken.

In two collieries the workmen, without the authority of their union, and without giving their employers due notice, struck work. When strike pay was refused they decided to resume work. But the employers now offered them a fresh contract to sign. The men in order to terminate their contract in a regular manner gave a fortnight's notice and the association granted strike pay.

It was held that Rule 64 did not authorise the payment of strike pay in such a case, since the society gave its sanction to the strike after it had begun.

On behalf of the society it was then contended that, the employers having refused to allow the men to come back on the old terms, the executive were justified in regarding the case as one of lock-out, and they were therefore entitled to grant strike pay under Rule 65. But it was held that the rule could not be applied here because the men could not be said to have "been thrown out of employment." Lord Justice Vaughan Williams said that the resolution passed by the men and the correspondence clearly showed that they never meant to resume work as before the strike. They only intended to go back for the purpose of putting the strike, which had already commenced, in order under Rule 64. It would have been a sham return and a sham resumption of work.

Watson v. Cann, 17 T.L.R. 39, was a very similar case in which the Durham Miners' Association was involved.

Grieg v. National Amalgamated Union of Shop Assistants, 22 T.L.R. 274, was a case where a trade union was restrained from applying its funds to provide a benefit not authorised by the rules. One of the objects of this society, as stated in its rules, was "to provide legal aid to members when necessity arose in their relations with employers, and, in case of a dispute arising between a member and his employer, or of unlawful treatment of a

member by his employer," the executive committee was empowered to provide legal aid for the member. The union, on behalf of one of its members, sued an employer for libel. It was held that the rules did not authorise this and that the union was only entitled to assist a member in bringing an action where the union and the member had a common interest in the matter under dispute. It may also be mentioned here that if there is not a common interest the union is guilty of the offence of maintenance and may be sued in tort (see p. 77 below).

In *Oram v. Hutt*, 29 T.L.R. 98, the same principle was involved. The officials of a trade union had, at the meetings, been accused by M, a member, of misconduct in connection with the business of the union. The society passed a resolution authorising the general secretary, the committee, and the lodges to take legal proceedings against M, either on behalf of the union or in their own names. J, the general secretary, thereupon sued M for slander and was awarded £1000 damages and his costs. M being unable to pay anything, J's costs were paid out of the society's funds, though there was no rule authorising such payment. Another member now sued the executive committee and the trustees, asking (1) for a declaration that the payment of J's costs by the association was *ultra vires*¹; (2) for repayment.

It was argued for the society that M's attacks were, in effect, directed against the executive committee and the responsible officers, and that in suing M the society was merely protecting its own interests. But the Court held: (1) That the trade union had no legal interest in the result of the slander action, and that the payment of the secretary's lawyer's bill was *ultra vires*; (2) that the secretary was liable to repay the money with interest at 4 per cent. (See also *Alfin v. Hewlett*, 18 T.L.R. 664.)

There are several cases on record where a branch of a trade union has threatened to secede and to distribute the branch funds amongst the members. In such cases

¹ *Ultra vires* = beyond their powers.

the trustees of the union may obtain an injunction restraining the branch trustees from making the distribution or from dealing with the funds otherwise than in accordance with the society's rules. Such an injunction may be granted even when the funds of the branch are vested in the branch trustees and not in the trustees of the union (*Cope v. Crosingham*, 25 T.L.R. 593).

M'Laren v. Miller, 7 R, 869, 4th series, is a similar Scottish case.

In *Wolfe v. Matthews*, 21 Ch. D. 194, an amalgamation of two trade unions was contemplated, but certain members of one of the unions obtained an injunction to prevent any of the union's funds being applied for the purposes of the amalgamation, on the ground that the rules provided only that the funds were to be used in providing benefit for members, and did not authorise any amalgamation.

If any of the objects of a trade union are not authorised by the Trade Union Acts it will be restrained from using the funds for those objects, even though the rules of the union purport to authorise them (*Amalgamated Society of Railway Servants v. Osborne* [1910], A.C. 87). For a fuller discussion of this case see pp. 119–121 below.

The Courts will Explain Rules.—Even when the Court is prevented by Section 4 of the Trade Union Act 1871 from enforcing a rule, it has still the jurisdiction to explain the meaning of the rule if this be necessary. Thus, in the case of *Watson v. Cann*, 17 T.L.R. 39, just referred to, the executive committee and the council of the Durham Miners' Association holding opposite views as to the power to grant strike pay under certain circumstances, the trustees applied to the Court to decide the true meaning and intention of the rules.

The agreements made by trade unions with the ordinary public, such as agreements to purchase goods, to employ clerks, etc., are, it is scarcely necessary to say, on the same footing as the generality of contracts, and are legally enforceable whether the society is "legal" or "illegal."

For further cases illustrating the possibility or impossibility of enforcing trade union contracts, see *The Law Relating to Trade Unions*, Chapter III and Supplement thereto, Chapters I and IV.

COLLECTIVE AGREEMENTS

In recent years there have been frequent suggestions that the collective agreements between employers and employees should be made legally binding. It therefore seems advisable to inquire into the nature of such agreements with a view to determining whether and how far they are capable of being legally enforced. The best known of these agreements are those operating on the various coalfields, in the manufactured iron and steel trade, in the shipbuilding industry, and in the engineering trade; the Brooklands Agreement for the Lancashire Cotton Trade; the agreement between the Federated Association of Boot and Shoe Manufacturers, and the National Union of Boot and Shoe Operatives known as the "Terms of Settlement"; various agreements and arbitration awards governing the conditions under which dock labourers, etc., are employed in various ports; the local agreements fixing the condition of labour in the building trade; the agreement between the London County Council and its Tramway employees; and the agreements made between the railway companies and their employees under the Conciliation Scheme of 1911.

It should also be mentioned that in most of the above trades, and in many others as well, arrangements exist for submitting questions to arbitration in the event of a voluntary agreement not being arrived at. As it is usual in such cases for the parties to agree beforehand to be bound by the arbitrator's award, that award, when made, becomes the agreement between the parties.

These collective agreements deal with a wide variety of subjects, wages, hours, overtime, piece-work, limitation of apprentices, limitations on employment of unskilled

labour, employment of unionists and non-unionists, employment of women, demarcation, black-listing, boycotting, strikes and lock-outs, bad materials, fines, change in manufacturing processes, introduction of new machinery, etc.

It is clear from the above list that certain clauses in many collective agreements must be legally unenforceable because they are in restraint of trade. Thus, clauses fixing the proportion of apprentices or unskilled workers to journeymen, or limiting the employers' freedom to employ non-unionists, and demarcation clauses would be bad for this reason, as would also clauses restricting piece-work and overtime, and probably those imposing conditions in respect of the introduction of new processes, etc.

Where the agreement as a whole, or some part of it, is in itself an agreement which is quite lawful, the position of the parties to it may render legal enforcement impossible, impracticable, or inexpedient. Thus, a collective agreement is often signed by a small number of employers and employees as representing large bodies of their fellows. The great bulk of the persons to whom the agreement is intended to apply are not legally parties to it at all, and can be under no legal compulsion to abide by it. It may be urged that the actual signatories to the agreement are in the position of having guaranteed its performance and are therefore liable on their guarantee. On the contrary, it may be argued that on entering into the agreement neither body of signatories intends to be legally bound itself or to bind the other, and that the agreement so far as they are concerned is a voluntary one.

Where a trade union, whether of employers or employees, becomes a party to an industrial agreement on behalf of its members the union is legally bound (so far as the agreement is not an unreasonable restraint on trade); and, in the event of a breach of the agreement by the members individually, the funds of the union may be made liable for the damage caused to the other party; but the individual members have no liability under the collective agreement.

Nevertheless such a collective agreement may be the means of strongly influencing the conduct of the individual members of the union. Thus, the rules of the union might provide for the suspension or expulsion of members acting in breach of a collective agreement entered into by the union. The indirect loss which the member will suffer if his union is impoverished by having to pay heavy damages must also be reckoned with.

In a few instances the due performance of collective agreements is secured by each party depositing guarantee money in the hands of trustees. In the event of any breach of the agreement the party in default forfeits the deposit, or such portion of it as covers the damage suffered by the other party, and it is the duty of the trustees to pay over the sum thus forfeited. Thus, in the case of the agreement between the Federated Association of Boot and Shoe Manufacturers and the National Union of Boot and Shoe Operatives each party deposits £1000. In the twenty years during which the agreement has been in operation the forfeitures have not been very numerous, nor, except in one case, very large. In 1899 the Operatives' Union forfeited £300 in respect of a strike and a refusal to appoint representatives to a Conciliation Board, and since then sums varying from £10 to £40 have been paid from time to time, generally by the operatives.

Under the rules of the Bristol General Importers and Dock Labourers' Arbitration Board each party on the board deposits £300 as "caution money," for securing performance of the provisions of the standing agreement between the parties or of any award made by the Board. And money paid over must be at once replaced by the party forfeiting it, so as to bring up the caution money to the original amount. A rule of the Bradford Dyers' Association Wages Board empowers the board to impose penalties for failure to carry out the decisions of the board or its arbitrators, and each party deposits £500 out of which any penalties incurred by it are paid.

An employer employing only a small number of work-

people sometimes enters into a formal written agreement with them. This agreement is signed by the employer and by each of the employees, and each employee is thus individually and separately bound to his employer and his employer is bound to him by a contract which can be enforced at law if necessary. Such a written agreement may be very advantageous to both parties by reason of the fact that it formulates clearly the main terms of the contract of employment and clears the air of doubts and misunderstandings. If both parties have a wholesome regard for public opinion it may reasonably be expected that the agreement which they thus put on unquestionable record will make some approach to the generally accepted standard of fairness. Moreover, when only a small number of persons is involved and these are in daily and close relations with each other, an instinctive respect for the written promise and for the legal liability which it covers will generally be sufficient to secure the due performance of the things promised.

The following hints as to the drafting of an agreement of this kind will, perhaps, be useful—

1. As the wages will be different for different persons there should be annexed to the agreement a schedule giving in tabular form the name of each employee, his description as a worker, his rate of wages, particulars of extra remuneration, etc.

2. The agreement should hold good for a stated period, but freedom should be reserved to each employee upon sufficient grounds to terminate the agreement (so far as it affects him) by a prescribed notice, *e. g.* a week or a fortnight, etc. Sufficient grounds would include illness, removal to an inconvenient distance, the offer and acceptance of other employment, etc., etc. Freedom should be reserved to the employer, upon sufficient grounds, to terminate the agreement (so far as it concerns any employee) by similar notice. Sufficient grounds in the case of the employer would include slackness of trade, giving up business, repeated absence of the employee without

permission, continued illness of employee causing absence. Freedom might also be reserved to the employer to dismiss without notice any employee guilty of certain specified kinds of misconduct.

3. If necessary there might be a penalty clause providing that each employee in default should pay a prescribed sum to the employer, and that in the event of the employer being in default he should pay the like sum to each employee affected.

4. An arbitration clause is necessary to provide for the settlement of disputes.

5. No stamp is required for such an agreement (Stamp Act 1891), Schedule I: see p. 7.

It will be seen that the only collective agreements which can be made compulsory appear to be those entered into by small employers and their employees, and those the due performance of which is secured by deposits of caution money. The great majority of industrial agreements are, in fact, voluntary; and, in the existing state of the law, must be so. Opinions differ as to the advisability of further legislation for the purpose of making legal enforcement possible, but the balance of opinion is undoubtedly in favour of relying on the moral obligation. The Industrial Council after making an inquiry into Industrial Agreements in 1913 reported that these agreements are in most cases well kept; and they expressed the conviction that the fulfilment of industrial agreements is, in the long run, more likely to be secured by an increased regard for the moral obligation and by reliance upon the principles of mutual consent, than by the establishment of a system of compulsion.

CONCILIATION AND ARBITRATION

So many industrial agreements come into being through the efforts of conciliation boards, or embody the awards of arbitrators, that it seems desirable to say something about the existing agencies for industrial conciliation and arbitration. It is necessary to observe that conciliation

and arbitration are distinct and different processes. In the course of an industrial dispute, or in anticipation of it, the opposing parties may be brought together on neutral ground, under the presidency of a neutral and sympathetic person with a view to arriving at a friendly settlement. Discussion being unfettered by technical rules of procedure, each side is able to put its own view of matters before the other. Grievances are thoroughly aired, and, as a result, often evaporate entirely. Mutual concessions are made, and, helped by the suggestions of the chairman, the parties gradually arrive at an agreement which satisfies them both, and which they are ready to carry out willingly without further question. Proceedings of this nature are conciliation proceedings, and it is obvious that where an agreement is arrived at under such circumstances the question of its enforcement, if raised, would probably damp the harmony of the proceedings.

When the parties, having failed to arrive at an agreement by conciliation proceedings, or even without resorting to them, agree to refer the matters in dispute to a third party, and to be bound by his decision, they are resorting to arbitration.

For a considerable time conciliation and arbitration proceedings have played a large part in our industrial system, and more than three hundred voluntary conciliation boards, arbitration boards, and standing joint committees are now known to the Board of Trade. Moreover, in many trades which have no boards, agreements are in existence between employers and employees which provide for the settlement of disputes by methods of conciliation and arbitration: *e. g.* the Brooklands Agreement in the Cotton Spinning Industry, the "Terms of Settlement" of the Engineering Trade, etc., etc.

The Conciliation Act of 1896.—This Act was passed in order to promote the settlement of industrial disputes by conciliation and arbitration. Under this Act the Board of Trade has a threefold duty—

1. It must keep a register of conciliation boards.

2. In any district or trade where it appears necessary the Board of Trade may appoint some person to inquire into the conditions of the trade or district and to confer with the employers and employed, or with any local authority or body, as to the expediency of establishing a conciliation board.

3. Where a trade dispute exists, or is apprehended, the Board may: (a) Conduct an inquiry. (b) Endeavour to bring the parties together in conference with a view to amicable settlement under the presidency of a chairman mutually agreed upon, or nominated by the Board of Trade or some other person or body. (c) Appoint a conciliator or conciliation board on the application of the employers or employees interested in the dispute. (d) Appoint an arbitrator on the application of both parties. Should a settlement be arrived at it must be put in writing and signed by the parties and a copy delivered to the Board of Trade. No fees are payable to the Board of Trade for any services it may render under the Act.

The Board of Trade has exercised its powers under the Act in many well-known disputes, *e. g.* the Lock-out in the Cotton Trade in December 1911, the Dublin Transport Workers' Strike in August 1913, the great Railway Strike of August 1911, and the Coal Strike of 1912.

Towards the end of the year 1911 the Board made two new and striking departures—

1. The establishment of the Industrial Council.

2. The creation of a special department, the Industrial Commissioner's Department, under a Chief Industrial Commissioner (Sir George Askwith).

The function of the Industrial Council is to act as a National Conciliation Council, and to supplement and strengthen the operations of the Board of Trade under the Conciliation Act. It will consider and inquire into any matter submitted to it affecting a trade dispute, and will take suitable action in regard to any dispute which affects the principal trades of the country, or is likely to cause disagreements involving auxiliary trades, or which the parties themselves cannot settle.

The Council as a whole will not sit to consider small disputes. It will be a force in reserve for dealing with disputes on a national scale or which affect a large number of workers. It is not intended that the creation of the Council shall interfere with such voluntary methods or agreements as are now in force, or are likely to be adopted, for preventing or settling trade disputes. And there is no compulsion on either party to a dispute to submit its case to the Council. It is, however, hoped that the Council will "obtain the confidence of the country so that it will come more and more to be considered the proper, the right, and the natural course in the case of a dispute where the disputants cannot come to terms themselves that, before stoppage takes place, the case should be submitted to the Council for examination and advice."¹

The chief Industrial Commissioner is the Chairman of the Industrial Council.

Industrial Council.—The following is a list of the members of the Industrial Council :

Chairman : Sir George Askwith, K.C.B., K.C.

Employers' Representatives.

Mr. G. Ainsworth.

Sir Hugh Bell, Bart.

Sir Gilbert Claughton, Bart.

Mr. W. A. Clowes.

Mr. J. H. C. Crockett.

Mr. F. L. Davis, J.P.

Mr. T. L. Devitt.

Sir Thomas R. Ratcliffe-Ellis.

Mr. F. W. Gibbins.

Sir Charles Macara, Bart., J.P.

Mr. Alexander Siemens.

Mr. Robert Thompson, J.P., D.L., M.P.

Mr. J. W. White.

¹ The President of the Board of Trade in his address at the first meeting of the Council.

Workmen's Representatives.

Right Hon. Thomas Burt, M.P.

Mr. T. Ashton, J.P.

Mr. C. W. Bowerman, M.P.

Mr. F. Chandler, J.P.

Mr. J. R. Clynes, J.P., M.P.

Mr. H. Gosling.

Right Hon. Arthur Henderson, M.P.

Mr. John Hodge, M.P.

Mr. W. Mosses.

Mr. E. L. Poulton.

Mr. Alexander Wilkie, J.P., M.P.

Mr. J. E. Williams.

Registrar : Mr. H. J. Wilson.

Office : Gwydyr House, Whitehall, S.W.

The following are the matters with which the Council may be required to deal—

1. Cases which may be referred to the Council, as an impartial body, for their opinion, upon the facts only of the case; to be conveyed to the parties privately.

2. Cases which may be referred to the Council in order that the facts may be impartially ascertained and recommendations made to each side, the acceptance of such recommendations not to be obligatory nor made public.

3. Cases similar to those last mentioned, but both sides agreeing beforehand that the recommendations of the Council be made public.

4. Cases which may be referred to the Council upon which a decision may be given, the parties agreeing to accept the decision as a final settlement.

5. Cases which may be referred to the Council, under special circumstances, by the Board of Trade or the Government.

6. Other matters, apart from particular disputes, which the Board of Trade or the Government may decide to

refer to the Council, with a view to obtaining a considered and representative opinion upon specific points.

The work of the Industrial Commissioner's Department of the Board of Trade is to exercise the Board's powers of conciliation and arbitration.

CHAPTER II

TORTS AND CRIMES

THE State imposes upon every citizen the duty of not doing harm to his neighbours without lawful cause or excuse. Any breach of this duty is a tort or civil wrong.

There are numerous breaches of duties which cause injury to others, but which are not torts because the duties are not imposed by the State. Thus, breach of a contract by one party to it may involve the other in serious losses, but the breach is not a tort, inasmuch as the duty of performing the contract was imposed by the parties themselves. Again, breach of a trust is not a tort, because the duty imposed upon a trustee is imposed by the person who created the trust. When a tort is committed it rests with the person injured to take legal proceedings for obtaining redress. He does not so much ask the Court to punish the wrongdoer as that the wrongdoer shall be ordered to pay him a sum of money (damages) to compensate him for the injury he has suffered. Or he may ask the Court to issue an injunction or order prohibiting the repetition or continuance of the wrong.¹ The result of having to pay damages or obey an injunction is, of course, indirectly a punishment; but, inasmuch as the ostensible purpose of the proceedings is to obtain redress rather than inflict punishment, the proceedings are termed civil proceedings, or a civil action.

In considering the definition of a tort the words "without lawful cause or excuse" must be noted. There are many cases in which one person may injure another without

¹ Where the commission of a tort is feared an injunction forbidding it may, in certain cases, be obtained before it has been actually committed.

committing a civil wrong. Thus, in business competition the success of one person may involve loss to another, but so long as the limits of fair competition are not passed no tort is committed. In numerous actions brought by or against trade unions and similar associations the commission of an apparent wrong has been justified on the ground that it was done in the ordinary way of trade competition, or to protect (in a legitimate way) the interests of the party sued. (See the *Mogul* case, p. 87; the *Glasgow Fleshers'* case, p. 88; *Mackenzie v. The Iron Trades Employers' Association*, p. 88; *Allen v. Flood*, p. 89; *Jenkinson v. Nield*, p. 90; *Peto v. Apperley*, p. 90; *Haile v. Lillingstone*, p. 90.)

A crime is a wrong of such a nature that the State, and not the injured person, resorts to legal proceedings against the wrongdoer, with a view to his punishment. Such punishment may take the form of a fine, imprisonment, flogging, hanging, etc. But the proceedings do not, as a rule, result in the injured party being compensated at the expense of the wrongdoer. Such proceedings are known as criminal proceedings, or as a criminal action or criminal prosecution.

There is no certain test for distinguishing between torts and crimes. In an earlier state of civilisation most of the offences which we now know as crimes—*e. g.* theft, manslaughter, and even murder—were dealt with at the instance of the injured party, to whom the wrongdoer would be ordered to pay a monetary compensation. As civilisation advances it is recognised from time to time that a certain class of injuries done to individuals may also result in injury to the community as a whole. Then the State, on its own initiative, takes steps to punish those who commit wrongs of this class. As soon as this is done the offence that was formerly only a tort becomes a crime too. Thus the progress of the nation from a lower to a higher stage of civilisation is marked by a gradual increase in the number of wrongful acts which are regarded as crimes. It is not therefore possible to give any real

definition of the word *crime*. The utmost that can be done is to enumerate those wrongs which are called crimes.

The same act may be both a crime and a tort, so that the wrongdoer, after being prosecuted by the State, and convicted for the crime, may be sued for damages in a civil action by the injured party. Thus, A, by reckless driving, kills B. He is prosecuted, found guilty of manslaughter, and sent to prison. It is then possible for B's widow to recover from A damages for the pecuniary loss which she has sustained through her husband's death.

A brief account will now be given of the more commonly occurring torts.

Defamation.—This is the wrong done to a man's honour or reputation and is of two kinds—

(a) Slander—when it is committed by means of spoken words or significant gestures.

(b) Libel—when it is committed by means of written words, drawings, or other symbols.

It is only in certain cases of slander that damages may be recovered without proof that actual pecuniary loss has been sustained. In these cases the slanderous words are said to be actionable *per se*. Words imputing the commission of a crime; words imputing unfitness, dishonesty, or incompetence in an office of profit, profession, or trade; words stating that a person is suffering from venereal disease; and words imputing unchastity or adultery to a woman or girl are actionable *per se*. In all other cases of slander actual material loss (special damage) must be proved if the plaintiff is to succeed in recovering damages.

Damages are recoverable for libel if the writing complained of is injurious to the plaintiff's character or credit, or tends to cause men to shun his society or to bring him into hatred, contempt or ridicule. If actual material loss can be proved "special damage" may also be a ground of action.

There are several defences to an action for slander or libel. It will be sufficient to mention the following—

1. That the words, etc., complained of are true. This defence will not, however, always avail if the libel is treated as a crime, and criminal proceedings are instituted (see p. 97).

2. That the words, etc., complained of are a fair comment on a matter which is fairly open to public discussion and which concerns the public interest. Thus an expression of opinion on the merits of a book offered to the public, or of a public speech or entertainment, cannot be made the ground of an action for slander or libel; and the same rule holds good with regard to criticisms of the conduct of persons in public offices or engaged in public affairs, and also of the managers of public institutions. The defence of fair comment is good whether the opinions expressed be wise or foolish, but it will not protect a person who makes specific allegations of misconduct against public officials, etc., or who makes untrue statements of fact regarding the contents of a book, or the character of an entertainment, institution, etc. Thus, it would be libellous to describe a book on a technical subject as being full of errors, or to say of a public institution that it was a hotbed of immorality.

3. That the words are a privileged communication in a matter of social and legal duty. In many of the relations of life it is often necessary for one person to express to another his opinion of the character, ability, etc., of a third person. Thus, A, having heard that his daughter wishes to marry B, and having some reason to believe (though not absolutely sure of it) that B is not a fit person to be her husband, is morally bound to tell her his opinion of B. The law recognises the existence of this moral duty and counts it a good defence even though A's statement is, in fact, untrue. But the privilege which A's position gives him is qualified by this condition—that in expressing his opinion he must be acting in good faith. For if B can prove that A was actuated by personal ill-feeling, or did

not honestly believe the truth of his statement, then A incurs full liability if his statement is indeed false.

The defence of privileged communication covers a confidential report made by an official superior concerning a subordinate, or by one employer to another concerning an employee, and also communications circulated amongst a number of persons having a common interest and made in defence of that interest. Thus "black lists" and similar communications are protected, provided that they are not in excess of the occasion, *i. e.* do not, either in their terms or their manner, convey more than is reasonably necessary for the protection of the interests involved. (See p. 90.) Statements made to persons in public authority in order to induce them to exercise their authority for the general good, and statements published for purposes of general information, may also be privileged communications.

4. A defence to an action of slander, which to the layman must appear very curious, is that of "vulgar abuse." Where accusations are made in violent and intemperate language by a person obviously in an excited state of mind, the hearers are not likely to attach any importance to them, and the person against whom they are directed cannot, therefore, be supposed to suffer any damage to character or reputation. Thus to call a man "a liar and a fraud," a "rogue," a "villain," is mere vulgar abuse and not actionable.

For further particulars see Mr. W. Blake Odgers' *Digest of the Law of Libel and Slander*.

Assault and Battery, though capable of being dealt with as civil wrongs, are usually the subject of criminal proceedings. They are, therefore, more conveniently treated of under the head of crimes. (See p. 94.)

Malicious Prosecution.—This is the wrong of instituting criminal proceedings against a man without good cause. The ingredients of the crime are as follows: (1) The man is innocent—the result of the criminal proceedings complained of will have established this. (2) The prosecutor had no reasonable and probable cause for prosecuting. (3) The proceedings were undertaken in a malicious spirit

and not in the furtherance of the ends of justice. Unless all these three facts are established, the aggrieved party cannot succeed in his action for damages.

Maintenance and Champerty.—Somewhat resembling the wrong of malicious prosecution is that of maintenance. This is the assisting of a person to carry on a lawsuit without having any interest in the case, and not having any lawful excuse, such as kindred, affection, or charity, for helping him: *e.g.* A, by negligent or reckless driving, injures B, a poor man; C, in order to pay off an old grudge against A, or out of mere officiousness, supplies B with money to institute legal proceedings against A. C has committed the tort of maintenance, and A has a right of action against him for damages. (See Grieg's case, p. 59.)

If C finds B with money on the understanding that he is to receive a share of the sum recovered as damages from A, the wrong is known as "champerty."

Trespass is the wrongful disturbance of another person's possession of land¹ or goods: *e.g.* going on to another man's land or into his house, etc.; taking possession of another man's goods, as by borrowing them without his permission; doing any act injurious to another's goods, such as defacing a picture, breaking furniture, killing, beating, or chasing animals. The causing of appreciable material loss to the possessor is not an essential part of the wrong of trespass. Every invasion of private property, however trifling, is a trespass, for if persisted in it may impair the possessor's title to his property. Thus, walking across a stubble field without permission, or putting on another man's coat, would be actionable. Loitering on a highway, not for the purpose of using it, but in order to annoy the occupier of the adjacent land, or to pry into his occupations, may thus amount to a trespass. The damages awarded in such cases would be nominal, since the main purpose of bringing the action would be to establish the possessor's rights. But wanton trespass, persisted in with violent and intemperate behaviour, may result in a verdict with exemplary or vindictive damages. Thus, where A, while drunk, entered

¹ Land includes buildings.

on B's land, on which B was shooting, and insisted on joining in the sport and was sued by B for trespass, a verdict for £500 was given against him (*Merest v. Harvey* [1814], 5 Taunt 422).

If A, the occupier of land or of a building, gives B licence or permission to enter, he may revoke the licence at will, and if B is then on the premises he must leave at once or become a trespasser. The fact that he has paid for permission to be there is immaterial. That is a matter of contract, and his remedy is to sue A for breach of contract. Attenders at public entertainments, such as concerts, theatres, football matches, etc., etc., enter by the licence of the promoters of such affairs, and, if they refuse to leave on being requested, they may be ejected as trespassers, no matter how unreasonable the request may be (see *Wood v. Leadbitter* [1845], 13 M. & W. 838).

Where trespass to goods has taken place the true owner may retake them (even from an innocent third party into whose possession they have come), and may use such reasonable force as is necessary. And reasonable force may also be used to expel a trespasser from land or from a building before he has gained possession, though if he is a peaceful trespasser (*i. e.* has not entered forcibly, as by breaking open a door, window, etc.), he must first be requested to leave. Where a trespasser has succeeded in gaining possession, and the lawful possessor is no longer in possession, the latter must not use force to regain possession. His remedy now is a civil action against the trespasser.

Negligence is the omission to do something which a reasonable and prudent man would do, or the doing of something which a reasonable and prudent man would not do. Thus, if A leaves a ladder on the pavement in front of his house in the dark, or leaves a trap-door open in the pavement, or neglects to repair or shore up a tottering wall, or drops things carelessly out of his window into the street, or drives furiously in the street, and, as a result of any of these omissions or acts, B is injured and suffers pecuniary loss, A is liable to B in damages for the tort of negligence.

The degree of caution and diligence which each man owes to his fellows varies with the circumstances of each case, and the only rule which can be laid down is that in any given circumstances he must show the foresight and caution which an average prudent man placed in the same circumstances could be expected to show. It is the function of the jury, as representing the average man, to say in the case before them whether the required standard of foresight and caution was reached.

Contributory Negligence.—Cases often occur where the injured person has also been guilty of negligence, and the question then arises—whose negligence has caused the injury? If A's negligence puts B in danger of injury, and B might avoid that danger, but, by his own negligence, does not do so, then B's negligence is the direct or proximate cause of the injury, and he cannot hold A liable—B is said to have been guilty of contributory negligence: *e. g.* A is driving on the wrong side of the road; B sees him some distance off, but does not make any attempt to get out of A's way, though he might easily do so. As a result he is run down and injured. The contributory negligence of B is a good answer to any claim for damages which he may make against A.

Damage must not be too remote.—If the chain of causes linking an injury done to one man with the act or omission of another is too long, the injured person has no claim for redress against the other—the damage is too remote: *e. g.* the steps leading to A's office are in a bad state of repair. B is ascending them on his way to see A; they give way and B falls and is stunned. He is carried home unconscious, and his wife, who is in delicate health, receives a fatal shock. As the wife would probably not have died had not the accident happened to the husband, the negligence of A is, indirectly, the cause of her death. Nevertheless, the pecuniary loss which B has suffered through his wife's death cannot be made the ground of a successful claim against A, because the damage is too remote.

Nuisance, like trespass, is a disturbance of a right of

property, but whilst trespass is the wrongful disturbance of possession, nuisance is the wrongful disturbance of the enjoyment of property. The following typical examples of nuisances will illustrate this—

The obstruction of a right of way by erecting a building or fence across a path.

Carrying on a noisy or offensive trade near another man's property, such as burning lime, tanning leather, making boilers.

Obstructing the access to a man's place of business to such an extent as to amount to something like blocking his doorway.

The collecting of a crowd of disorderly people by a noisy entertainment.

In the case of *Wallis v. United French Polishers' London Society* (*The Times*, November 28, 1905), a trade union was restrained from picketing certain business premises, on the ground that the presence and behaviour of the pickets constituted a nuisance. The society had stationed two men each day, and on some days more, outside an employer's establishment. They had cards in their hats headed "Pickets," which stated that the employer's French polishers were on strike against a reduction of 1*d.* an hour in their wages. It was admitted that the men did not speak to any one entering, or about to enter or leave the premises. But the employer alleged that the fact that the men walked up and down the pavement outside his shop with the cards in their hats was a nuisance and annoyance to him. The decision seems to have been influenced by the wording of the Conspiracy and Protection of Property Act 1875. The Trade Disputes Act 1906 was passed soon after the case was decided, and such a decision would not now be possible if the picketing was being done in contemplation or furtherance of a trade dispute.¹

A nuisance may be either public or private.

A public nuisance—or, as it is sometimes called, a common

¹ The question whether picketing can be dealt with by prosecution as a public nuisance is discussed on pp. 109–114 below.

nuisance—is one which affects the community at large, or a considerable portion of it, *e. g.* the inhabitants of a town or village. It is an unlawful act or omission which endangers the lives, safety, health, property, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all the King's subjects. The obstruction of a highway is the commonest example of this. A public nuisance is technically a crime, and is dealt with by the process of a criminal prosecution, though a private individual may bring a civil action if he suffers any particular damage over and above that which is suffered by the rest of the community along with him.

A private nuisance is one which affects only a single person or a determinate number. The injured person or persons must proceed by way of a civil action, claiming damages or an injunction, or both.

Another method of dealing with a nuisance is by way of abatement, *i. e.* the persons aggrieved put an end to the nuisance by their own act. This remedy is more appropriate to a public nuisance than to a private one. Thus, the inhabitants of a town or village, or the public local authority of the same, may legally remove obstructions or encroachments on the highway. If a private nuisance affects the rights of a considerable number of persons, they may often with advantage proceed to abate the nuisance. Thus, where fences have been erected on a common,¹ thereby interfering with the commoners' rights, the commoners are legally justified in pulling down and removing the whole of the fence. It is better in such cases to give notice of the intended abatement, and all unnecessary damage should be avoided. Thus, when a gate or barrier is removed it should not be broken more than is necessary.

Procurement of Breach of Contract.—This tort consists in inducing one person to break his contract with another.

¹ It is a popular notion that the general public have rights over the common lands. This is not always so. The only persons having such rights may be the Lord of the Manor and the commoners of the Manor, who may be a very small class, or, in certain cases, the inhabitants of a parish.

Thus, in *Lumley v. Gye*, 22 L.J.Q.B. 463, a singer, W, had agreed with L, the lessee of a theatre, to sing at that theatre and nowhere else for a certain period. G induced her to break her contract with L. It was held that G in so doing had committed a wrongful act against L, and that L was entitled to recover damages in respect thereof.

In *Temperton v. Russell* [1893], 1 Q.B. 715, certain master builders and three trade unions had agreed with each other upon certain rules for the regulation of their trades. One of the building firms refused to observe the rules, and the joint committee of the three trade unions, in order to bring pressure to bear on this firm, tried to persuade T, who was supplying the firm with building materials, to cease supplying them. T refused, whereupon R, a representative of the unions, approached B, another builder, who was also getting his building materials from T under a contract, and threatened to call out his workmen if he took any more material from T. B, in order to avoid trouble with his workmen, refused to take more goods from T. It was held that T might bring an action against R for maliciously procuring breaches of contract.

A noteworthy case of this class is the "Stop-day Case": *South Wales Miners' Federation v. Glamorgan Coal Co.*, 74 L.J.K.B. 525. In order to prevent violent fluctuations in coal prices and miners' wages, the Federation attempted to counteract the operations of certain speculators in coal. They accordingly ordered certain "stop-days," when the miners were to absent themselves from work without notice. For thus procuring the miners to break their contracts the Federation was held liable.

Closely connected with cases of procurement of breach of contract are those cases where, without actually causing any contract to be broken, one person induces another to cease doing business with, or employing, or being employed by, a third. In the Trade Disputes Act 1906, Section 3, such conduct is referred to as "interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or labour

as he wills.” A number of decisions immediately preceding the passing of the Trade Disputes Act 1906 made it clear that such interference is not in itself unlawful if it be done in the legitimate interests of the person interfering, and is not accompanied by any acts which are in themselves unlawful, such as violence, threats, misrepresentations, or procurement of breach of contract. In the ordinary course of business, trade competitors are constantly striving to secure advantages over each other, and this must, of necessity, involve considerable interference with each other’s business, etc. (See the *Mogul* case, the *Glasgow Fleshers’* case, *Mackenzie v. Iron Trades Employers’ Association*, *Allen v. Flood*, *Jenkinson v. Nields*, *Peto v. Apperley*, *Haile v. Lillingstone*, pp. 87–91.)

Conspiracy.—Though there are some judicial dicta which support the contention that conspiracy is in itself a tort, and may be made the ground of an action for damages, the balance of authoritative opinion favours the view that it is only the act done in pursuance of the conspiracy which constitutes the tort. Conspiracy is, however, in itself, and quite apart from the thing agreed upon, a crime, and is fully dealt with under the head of Crimes (see pp. 99–103).

ACTIONS IN TORT AS AFFECTED BY THE TRADE DISPUTES ACT 1906

The most important provision of this Act is that contained in section 4 (1), which prohibits actions of tort against trade unions. It is pointed out in another chapter (p. 118) that, prior to the *Taff Vale* Decision in 1901, trade unions were thought to enjoy the same immunity from actions of tort as was given them against certain actions of contract by Section 4 of the Trade Union Act of 1871. This immunity is now legally secured to them, for not only is it made impossible to sue the trade union itself, but no members or officials may be sued *on behalf of themselves and all other members*. The words italicised should be noticed. Their effect is to leave every trade

union member and official personally liable for any tort which he may commit while acting on behalf of the union. Section 4 (1) of the Act only prevents them from being sued so as to make the funds of the union liable. Section 3, however, protects members and officials from personal liability for procuring breaches of contract of employment, or for interference with another person's trade, etc., if done in contemplation or furtherance of a trade dispute.

It was thought for some time that the immunity given to a trade union by section 4 was limited to torts committed in contemplation or furtherance of a trade dispute, or at least to torts committed by the trade union in matters in which it was acting in its capacity as a trade union. The question has now been partially solved by the decision of the House of Lords in *Vacher v. London Society of Compositors*, 29 T.L.R. 73. In this case a firm of printers brought an action against a trade union and its officials for libel and conspiracy to publish libels concerning the firm and to induce persons not to deal with the firm. It was held that if the trade union had committed the tortious acts complained of it could not be sued for damages, even though they were not committed in contemplation or in furtherance of a trade dispute.

As to the liability of a trade union for tortious acts committed by its officials in the course of their official duty, but in matters which are not distinctively trade union matters, the question is in some doubt. To take an extreme case: Suppose that a trade union has suspended over the doorway of its offices a heavy sign, and that through the negligence of the secretary or other official in charge of the offices this sign is insecurely fastened and falls upon a passer-by and injures him: if any employer other than a trade union were involved, there is no doubt that he would be liable for the negligence of his servant, in accordance with the general principle of law which makes every master liable for any wrongful act of his servant done in the course of his employment and arising out of the employment.

In the case suggested there is no doubt that the trade

union, through its official in charge, has neglected its duty to the general public in not having the premises made safe; and, inasmuch as the circumstances under which the tort is committed have no relation to the trade union's distinctive function of regulating the relations between workmen and masters, etc., it has been argued that Section 4 (1) of the Trade Disputes Act 1906 does not apply. While certain dicta of Mr. Justice Darling undoubtedly favour the contention that the trade union cannot be made liable, there are dicta in *Vacher's* case, both in the Court of Appeal and in the House of Lords, which suggest that though a trade union is not liable to be sued in tort, yet its funds may indirectly be liable to make good damages inflicted by the trade union or its agents by tortious acts not committed in contemplation of a trade dispute. Hence it might be argued that the combined effect of Sub-section 2 of Section 4 of the Trade Disputes Act 1906 and of Section 9 of the Trade Union Act 1871 (see p. 156), is that, in cases such as the one suggested, the trustees of the union could be sued, and, if judgment were given against them, could claim to be reimbursed from the funds of the union, thus making the union funds really liable. On the other hand, the Scottish Court of Session in the case of *Shinwell v. National Sailors and Firemens' Union* (reported in the *Board of Trade Labour Gazette*, July 1913) has expressly decided that this cannot be done, as its effect would be to make worthless the immunity given by section 4.

If the decision in *Shinwell's* case is correct, the personal responsibility which rests upon trade union officials may prove a heavy one, for, while in the ordinary case of a tort committed by a servant the injured party may sue either the master or the servant, it is almost invariably the former who is sued, for he is usually the better able to pay. In the trade union world servants must, until this point of law has been settled, be prepared to face the financial consequences of their own tortious acts and omissions.

Sections 1, 2 and 3 of the Act limit the liability of

individuals for certain specified acts done in contemplation or furtherance of trade disputes.

Section 1 refers to conspiracy,¹ and provides that "an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done, without any such agreement or combination, would be actionable." Thus, so far as trade disputes are concerned, an end is put to the contention that the doing of an act by two or more persons in concert with each other can be a civil wrong, though the same act if done by one person is not wrongful. A number of authoritative legal decisions had, before the Act, laid this down as the general law for all cases. (See the *Mogul* case, the *Glasgow Fleshers'* case, and *Allen v. Flood*, pp. 87-90 below; see also *The Law Relating to Trade Unions*, pp. 120-130, where a number of cases are discussed.)

Section 2 legalises "peaceful picketing" and, incidentally, defines it as "attending at or near a house or place where a person resides or works or carries on business or happens to be . . . for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working." (See also p. 103 below.)

Section 3 limits the liability for (1) inducing a person to break a contract of employment, (2) for interfering with the trade, business, or employment of some other person, or with his right to dispose of his capital or his labour as he wills. It provides that "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or labour as he wills."

It will be noticed that the section only applies to breaches

¹ Conspiracy is defined on p. 99 below.

of contract of employment. Thus cases like *Temperton v. Russell* (p. 82 above) would not come within the protection of the Act, but *Lumley v. Gye* would if a trade dispute were in existence or being contemplated. In *Smithies v. National Association of Operative Plasterers and others* [1909], 1 K.B. 310, the trade union had called out the workmen of Smithies because he persisted in employing as foreman a former member of the union who had been expelled for non-payment of a fine. Two workmen who were engaged to work for Smithies under a long-time contract came out with the rest.

As the act complained of took place before the Trade Disputes Act came into force, the union was held liable in damages to Smithies. Under similar circumstances the union would now be protected by section 4, while any officials or individual members if sued would have a good defence in section 3.

Reference has already been made to interferences with a person's trade or business, etc., and a few illustrative cases will now be given. The classical example is the Mogul case: *Mogul Steamship Co. v. M'Gregor, Gow & Co.* [1892], A.C. 25. An association of steamship companies and owners combined to regulate the amount of shipping to be sent to certain ports, the division of cargoes amongst themselves, and the fixing of rates of freight. In order to drive their rivals out of the market they offered reduced rates of freight to shippers who shipped only with members of the association, and agents of the associated members were prohibited from acting in the interests of competing shipowners. Another company desired to join the "ring," but were refused admission, and when they sent two of their steamers to Hankow to secure homeward cargoes, the agents of the "ring" sent circulars to shippers at Hankow reminding them that if they shipped by these two steamers they would be excluded from certain privileges which the "ring" had been in the habit of allowing them to enjoy. Moreover steamers belonging to the "ring" were despatched to Hankow to underbid the

steamers of the rival company, with the result that the latter could do little profitable business. Certain members of the "ring" also dismissed agents who had acted for the rival company. The company now brought an action in tort against the members of the "ring." It was held that the "ring" had not violated any legal right of the company.

The *Scottish Co-operative Wholesale Society v. Glasgow Fleshers' Trade Defence Association*, 35 Sc.L.R. 645, was a similar case. An association of butchers intimated to the cattle salesmen at a certain market that they would not, in future, bid in that market unless the salesmen refused the bids made by the Co-operative Stores. The salesmen therefore inserted in their conditions of sale a notice to the effect that they would not accept bids from the representatives of the Stores, and they did, in fact, refuse such bids. The market was held on a public wharf, which was, for the time being, the only place in Scotland licensed for the landing of American and Canadian cattle. The Co-operative Association must therefore have sustained considerable loss, and they brought an action against the Fleshers' Association claiming damages: Held, that the fleshers were not liable as they were acting within their legal rights.

Mackenzie v. Iron Trades Employers' Insurance Association [1910], S.C. 79, was another Scottish case. An injured workman had received compensation under the Workmen's Compensation Act from his employers and they had recovered the same from the Insurance Association with whom they had insured themselves. The Insurance Association sent to the firms insuring with them lists of workmen whom they insisted the employers should not employ, as they had been injured in accidents. In consequence of the issue of these lists the workman was dismissed from two situations (presumably with proper notice) and was refused employment at a third. He brought an action against the Insurance Association, but it was held that the Association's conduct was not wrongful.

The Lord Ordinary said that it was not the law that any interference with what was termed a man's right to work constitutes an actionable wrong. If it were it would be difficult to see how there could be free competition in business. There is no actionable wrong unless the interference is unjustifiable.

In *Allen v. Flood* [1898], A.C. 1, Allen, an official of a trade union of boilermakers, procured the dismissal of two workmen by informing their employer that the members of the union would leave work unless this were done. The men dismissed were shipwrights, who had offended the boilermakers by undertaking ironwork on a previous job. The employers were not legally bound to continue to employ the two men, and the case was therefore not one of procuring a breach of contract: Held, that Allen's conduct was not actionable.

It will be seen that in the *Mogul* case, the *Glasgow Fleshers' Case* and in *Allen's* case the acts complained of were acts of trade competition, done for the purpose of securing such advantages as competitors in trade are constantly striving for. Allen's case was one of competition in labour, in all respects analogous to competition in trade. It is part of the workman's right of competition to resolve that he will decline to work in the same employment with certain other persons and to intimate that resolution to his employers. The boilermakers' action was comparable with the conduct of a tradesman who induces the customer of another tradesman to cease making purchases from one with whom he has long dealt, and, instead, to deal with him, a rival in trade. The boilermakers were marking their sense of the injury which they thought the shipwrights were doing them in trenching on their proper line of business, and, at the same time, were taking a practical measure to prevent a recurrence of what they considered an improper invasion of their special department of work.

The lists circulated by the Insurance Association in Mackenzie's case are substantially of the same nature as

the "black lists" to which trade unions, both of workmen and employers, often resort. The issuing of a black list is, of course, an interference with some person's trade or business, or employment, or his right to dispose of his capital or labour as he wills. Nevertheless, if it is no more than interference it is not wrongful. Thus, during a lock-out in the tailoring trade a masters' association circulated a black list containing the names of men locked out, and asking other employers not to employ them. A workman who was refused work as a result of this brought an action against the president of one of the branches of the association. It was held that the principle of the *Mogul* case applied and that the conduct of the association was not actionable (*Jenkinson v. Nield* 8 T.L.R. 540).

In *Peto v. Apperley*, *Law Times*, October 10, 1891, an injunction was asked for, to restrain the secretary of a trade union from posting and distributing the following notice: "London United Trade Committee of Carpenters and Joiners. Wanted—Carpenters and Joiners to keep away from Cane Hill Asylum, pending the settlement of the London strike. By order of the Committee. W. Apperley, secretary *pro tem.*" The injunction was refused.

In *Haile v. Lillingstone*, *Law Times*, October 10, 1891, decided at the same time, the notice was as follows: "Boycott the Sweater—An appeal to the public and trade unionists. Patronise the shops who close at five on Thursdays. We, the undersigned . . . appeal to you . . . to refuse your custom to and boycott Haile, cheesemonger—the blackleg tradesman—who has acted the part of Pecksniff right through the agitation; and let every self-respecting man and woman, with a sense of duty towards others, resent the contemptible part played by Haile, and support the shop assistants in the vigorous measures taken against those who, by their refusal to co-operate with their fellow-tradesmen in shortening the hours of labour, are making our lives one weary round of

toilsome monotonous labour. . . . The boycott is the only weapon now left us to use, having tried moral pressure and Acts of Parliament without avail, and all hope in that direction has been crushed out; therefore boycott the above and deal exclusively with those who, by giving a few hours' leisure to their assistants, show they are worthy of support. (*Signed*) W. Lillingstone." Held, that no wrongful act had been committed.

From the fact that the seven cases above quoted were all decided before the Trade Disputes Act was passed it is clear that in sanctioning interference with a person's trade, business, etc., the Act made no innovation, but was simply declaring the existing law.

The words "on the ground only," in Section 3 of the Trade Disputes Act must not be overlooked. Their effect is to withdraw the protection of the section if the inducement to break a contract or the interference with trade, etc., is accompanied by conduct which is wrongful in itself, such as the use of violence, threats, undue influence, or misrepresentation.

The following are cases in which liability was incurred because one or more of these elements was present—

In *Conway v. Wade* [1909], A.C. 506, a workman, Conway, had made himself obnoxious to his fellow-workmen by refusing to pay a fine to his trade union. Wade, a delegate of the union, told the foreman of the works that he had better stop Conway, or there would be trouble with the men. Conway was accordingly discharged, and thereupon sued Wade. The jury found that Wade had uttered a threat to Conway's employers with the intention of preventing him from getting work; that this was done to compel Conway to pay the fine, and to punish him for not paying it; that this was not done only to warn Conway's employers that the union men would leave in consequence of their being unwilling to work with him. Judgment was given in favour of Conway.

This case strongly resembles *Allen v. Flood*, but there is this difference, that in *Allen v. Flood* the communication

made by Allen to the employers was a warning, not a threat uttered with the design of bringing pressure to bear on the minds of the employers. It is not possible by means of any definition to distinguish between a warning and a threat. Much depends on the circumstances in which the words are spoken, and on the tone of voice of the speaker. The jury (or the judge if there is no jury) must in each case decide, as a question of fact, whether the words complained of constitute a threat or a warning. (See also *Curran v. Treleaven*, p. 106 below.)

It was said by Lord Macnaghten, in *Allen v. Flood*, that, if Allen had induced the employers to act as they did by wilfully misrepresenting to them the men's intentions, he might have rendered himself liable.

In *Read v. Friendly Society of Operative Stonemasons* [1902], 2 K.B. 732, an employer had agreed with a trade union to observe a certain rule of the society relating to apprentices, but in breach of this agreement he received Read as an apprentice to the trade of a stonemason. The officers of the society threatened to call out their members and the employer then refused to teach Read any longer. Read now sued the society for damages and was successful in his action. This case was tried some years before the passing of the Trade Disputes Act, but the decision would be the same under the Act, for where threats are used the procurement of a breach of contract is still illegal.

Trade Dispute.—As the protection given by Sections 1, 2 and 3 of the Trade Disputes Act is conditional on there being a trade dispute either in existence or in contemplation, it is necessary to know exactly what constitutes a trade dispute. Section 5 (3) defines it as “any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the condition of labour, of any person”; and the expression “workman” means “all persons employed in trade or industry whether or not in the employment of

the employer with whom a trade dispute arises." Thus, a secondary strike is a trade dispute within the meaning of the Act. Whether a trade dispute is in existence or is being contemplated is a question of fact for the jury or judge to decide in each particular case. A mere personal quarrel, or grumbling, or an agitation will not suffice. It must be something fairly definite and of real substance.

In *Conway v. Wade* (see p. 91 above), the dispute was one between some members of the union and Conway arising out of the non-payment of a fine. The House of Lords held that this did not constitute a trade dispute.

In *Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland* [1903], 2 K.B. 600, a branch treasurer had withheld money belonging to the society, and though a County Court judgment had been obtained against him, he did not make the deficiency good, and was expelled from the society. Certain officials of the society on six different occasions procured his dismissal from employment by telling the employers that the other men would be withdrawn if he were not discharged. Such a case as this is outside the protection of the Trade Disputes Act for two reasons: (1) The acts of the officials in procuring the ex-treasurer's dismissal from employment were not done in contemplation or furtherance of a trade dispute; (2) the dismissals were procured by threats addressed to the employers.

A dispute as to whether non-union men shall be employed is a trade dispute within the meaning of the Act (*Gaskell v. Lancashire and Cheshire Miners' Federation*, 28 T.L.R. 518).

The Stop-day Case (see p. 82 above) was decided before the Trade Disputes Act was passed. Section 3 of the Act would not cover such a case because there was no trade dispute in contemplation or in existence. Thus, the officials would now be liable personally though the union would be protected by section 4 (1).

In *Long v. Larkin*, 113 L.T. 337, a Stevedores' Association (an employers' association) were in dispute with a

stevedore, A, who refused to join them. B, an official of a dock labourers' union, in order to force A to join the Stevedores' Association, induced certain dock labourers engaged by A to break their contracts with him: Held, that there was no trade dispute within the meaning of Section 5 of the Trade Disputes Act, and that B's conduct was actionable.

For numerous other cases illustrating the meaning of "trade dispute" and the distinction between a threat and a warning see *The Law Relating to Trade Unions*, pp. 84, 93, 100-101, and the Supplement thereto, pp. 73-80, 82-85.

WRONGS IN THEIR CRIMINAL ASPECT

The wrongs described as torts will now be briefly treated of in their criminal aspect.

Assault and Battery.—Battery is the application of unlawful force to another with hostile intention. The least force is sufficient to constitute a battery: *e. g.* to hustle a man, to touch him on the shoulder, to spit on him, etc.

Assault is any action which puts another in instant fear of unlawful force, even though it be not actually applied: *e. g.* to shake the fist, to present a firearm (even though unloaded) or even perhaps something which looks like a firearm. Although in popular language the word assault includes battery, the offence of assault is something less than battery. Battery, however, always includes an assault. The common law as to assault and battery was not comprehensive enough to secure protection against all forms of bodily harm intentionally inflicted, for some bodily movement is an essential part of an assault or battery. Thus, mere motionless obstruction, as by wilfully standing in front of a cyclist, so that he is overthrown, is not an assault or battery. By the Offences against the Person Act, 1861, it is made a felony, punishable with penal servitude for life, to unlawfully and maliciously wound or cause grievous bodily harm to any one, or to

shoot at him with intent to maim, disfigure, disable or do any other grievous bodily harm, or prevent an arrest.

An assault and battery may be justified in any of the following circumstances—

1. When it is committed in the furtherance of public authority, as in preventing a breach of the peace or arresting a person who has committed a felony. This applies not merely to a constable but to a citizen assisting a constable.

2. In the correction of one's children, school pupils, and apprentices under one's authority.

3. In self-defence or the defence of one's property. This extends to the justification of a person who interferes to protect those to whom he owes a moral or social duty, *e.g.* wife, child, parent, employer, employee, or any weakling unable to protect himself or herself. The action of a steward in removing some one from a public meeting is also justified on grounds analogous to those of defence of one's property. In any of these circumstances the defender may strike before he or the person he is defending has been struck. He must not use more force than is reasonably necessary in the circumstances; thus, it is not lawful to use firearms or a knife in defending oneself against an ordinary assault. Similarly in defending property reasonable force, and no more, may be used against a trespasser or thief.

Trespass.—Simple trespass is at common law no longer punishable as a crime. Thus, the notice "Trespassers will be prosecuted," so often seen, is a "wooden falsehood." A civil action for damages is the remedy against a trespasser, not a prosecution.¹

Arson and Malicious Injury to Property.—These crimes are dealt with by the Malicious Injuries to Property Act 1861.

¹ It should be noticed that while a trespasser cannot be prosecuted under the common law, he may, in certain cases, be prosecuted under a by-law, *e.g.* by-laws of Railway Companies and similar bodies. (See *Larkin v. Belfast, Harbour Commissioners*, p. 106 below.)

Arson is the crime of unlawfully and maliciously setting fire to a building, ship, stack, coalmine, or railway station, or to crops or plantations. The offence is committed if nothing more than the charring of woodwork takes place.

The extreme penalty is death where a King's ship, or dockyard, or a ship in the Port of London is set on fire. In other cases it is penal servitude for fourteen years or even for life.

The Malicious Damage Act 1861 makes it a crime (punishable with penal servitude for life) to destroy machinery used in textile manufactures, or textile goods exposed in process of manufacture. The same Act punishes malicious injuries to all other property, where the damage exceeds £5, with penal servitude for five years if committed between 9 p.m. and 6 a.m., and with imprisonment for two years when committed between 6 a.m. and 9 p.m. If the damage amounts to not more than £5 the punishment may be either imprisonment (for two months) or a fine not exceeding £5, together with compensation, not exceeding £5, to the aggrieved party. This enactment applies to damage done to crops and trees and to the plucking of roots and flowers. A very slight injury is sufficient to constitute the offence, *e. g.* a person has been convicted for cutting chestnut blossom of the value of 11*d.* But mere trespassers who do no damage cannot be dealt with under this Act.

Libel is punishable as a crime because it tends to provoke a breach of the peace. Hence publication to the person libelled is sufficient ground for criminal proceedings, whereas a civil action cannot succeed unless it be proved that the libel was published to a third party. Previous to 1843 it might be said in criminal proceedings for libel that "the greater the truth the greater was the libel," a true statement being more provocative than a false one. But Lord Campbell's Act makes the truth of a libel a good defence in criminal proceedings, if it be also proved that the statement was made for the public benefit.

But a person who makes a statement which is objectionable on grounds of decency, or as being a painful intrusion into the privacy of domestic life, cannot avoid a conviction by proving the truth of what he wrote. A person who libels a dead man may in certain cases be proceeded against criminally by the relatives of the deceased, though he is not liable to a civil action.

A private libel is one which defames an individual. A public libel is one which injures religion (blasphemous libel), government (seditious libel) or morals, or reflects on the administration of justice.

Slander which defames a private person can only be dealt with as a civil wrong, except where it provokes a breach of the peace, when it may become the subject of criminal proceedings. A public slander can only be dealt with as a crime. The punishment for libels and slanders, treated as crimes, is fine or imprisonment. There is no limit to the period of imprisonment for public libels and slanders, but hard labour cannot be imposed. In cases of seditious libels and slanders the imprisonment is in the first division only.

OFFENCES OF COMBINATION

In the days before our present efficient police system was established by Sir Robert Peel, the governing authorities of this country were exceedingly prone to apprehend danger from almost any combination of citizens for a common purpose, and offences which in themselves might be almost insignificant were punished with great severity if they were the outcome of the combined action of two or more persons. The law relating to what may be called offences of combination has so frequently been put into force against workmen engaged in trade disputes that it is necessary to treat of the following: Unlawful Assembly, Rout, Riot, Riotous Assembly, Conspiracy.

Unlawful Assembly is the meeting together of three or more persons for any purpose which is likely to involve

violence, or to produce in the minds of others a reasonable expectation of violence. It is not essential that anything should be done towards carrying out the purpose, it is the mere fact of meeting which makes the crime. Thus, if a number of men meet together to view a prize-fight they have broken the law, even though the fight does not take place.

Even if the purpose of the meeting is quite lawful and harmless, the assembly becomes unlawful if the parties to it conduct themselves in such a way that people possessed of a reasonable amount of courage and firmness have reason to fear that a breach of peace will take place. There are many circumstances connected with such an assembly which might give rise to this fear, *e. g.* the absence of women and children from a crowd, a late hour of meeting, threatening cries, carrying of weapons, a seditious tone in the speeches, etc.

Rout.—If the purpose of an unlawful assembly be illegal, and any act is done towards carrying it out, the assembly becomes a rout.

Riot.—If the illegal purpose is actually achieved the rout becomes a riot.

Thus, as we have seen, the mere meeting of men to view a prize-fight is an unlawful assembly, but when they set off to the scene of the fight they become a rout, and as soon as the first blow is struck a riot is in existence.

A Riotous Assembly.—This is the offence popularly known as a riot. It is an offence created by the Riot Act of 1715. The elements of this crime are as follows—

1. There must be an unlawful assembly of twelve or more persons.

2. A Justice of the Peace must have read, or attempted to read, a proclamation contained in the Act, calling upon them to disperse.

3. An hour must elapse without their dispersing.

Unlawful assembly, rout, and riot are misdemeanours punishable by fine and imprisonment. Riotous assembly

is a felony, punishable by penal servitude for life, but prosecution must take place within a year of the offence being committed.

It is lawful for private persons acting on their own initiative to forcibly disperse any of these four kinds of gatherings. But in the case of unlawful assembly, rout, or riot it is not lawful to kill or to employ deadly weapons, though sticks may be used. The Riot Act expressly exonerates any one who, on the expiration of an hour after the "reading of the Riot Act," injures or kills any one in attempting to disperse the mob or arrest any member of it. And if the mob has begun to commit acts of felonious violence (*e. g.* murder, rape, robbery, breaking into houses, shops, warehouses, etc.) extreme force may be used against it, even though the Riot Act has not been read. Thus, in such a case, soldiers may fire without waiting for the "statutory hour" to elapse. Under the Army Regulations the officer commanding the soldiers is not to give the command to fire without the magistrate's order if a magistrate be present, but if no magistrate be present it is the officer's duty to take steps to prevent acts of felonious violence, and he must, if necessary, on his own responsibility, order his men to fire.

It is a magistrate's duty, in the event of a riot, to go to the scene of trouble, to read the proclamation if necessary, and, in extreme cases, take the steps necessary for the dispersion of the mob.

(For fuller information on this subject see Kenny's *Outlines of Criminal Law*, or Stone's *Justice's Manual*.)

Conspiracy.—A conspiracy is an agreement of two or more persons to do an unlawful act, or to effect by unlawful means a purpose which is not in itself unlawful.

The gist of the offence is the agreement. It is not essential that the act agreed upon should be done. The punishment will, however, be more severe when this is the case.

In a conspiracy the unlawful act agreed upon may be : (1) a crime ; (2) a tort ; (3) a breach of contract ; (4) an

act which is outrageously immoral; (5) an act which is extremely injurious to the public interest.

Rings and Corners.—Agreements to restrict competition or to create monopolies, and which result in the formation of what are termed “rings,” “corners,” etc., may come within the definition of conspiracy. If, however, the parties to such an agreement do no more than they might do individually in the ordinary way of competition in business, it seems clear that there can be no conspiracy: *e.g.* the combinations complained of in the Mogul case and the Glasgow Fleshers’ case (see pp. 87–89). When a trade union is formed the members usually agree that none of them will work for any employer who pays less than a certain rate of wages, or whose conditions of employment are below some recognised standard. Such an agreement is often directed against a specific employer. The agreement embodied in the rules of such a trade union is on all fours with the agreements in the Mogul and the Glasgow Fleshers’ Case, and is quite lawful. These agreements may do considerable harm to other persons, but they are legally justifiable, because they are entered into for the purpose of advancing the legitimate interests of the agreeing parties. They cannot, however, be legally enforced, being no more than voluntary agreements. (See pp. 1 and 49.)

In the “Stop-day” case, p. 82 above, the members of the executive of the Federation combined to induce the miners to break their contracts with their employers. There was thus an illegal conspiracy. In Giblan’s case also (p. 93) there was an illegal conspiracy, inasmuch as the object of the officers of the union was not the promotion of the legitimate interests of their members, but the punishment of a man who did not pay his debts to the union.

Boycotting.—The liability incurred by persons who take part in a “boycott” is not clearly established. In the case of *Boots v. Grundy*, 82 L.T. 769, Phillimore J. said that if and where the practice of boycotting, maliciously and without just cause and excuse, was carried on to such

an extent as to deprive a man or woman of the means of livelihood, it would be a blot upon our law if the confederate boycotters could not be punished.

TRADE UNIONS AND THE LAW OF CONSPIRACY

By the comparatively modern decision of the House of Lords in the *Mogul* case, in the year 1891, it has been established that even at common law a combination for the purpose of restraining trade is not necessarily an illegal conspiracy. Nevertheless a series of legal decisions adverse to trade unions had made it necessary for Parliament in 1871 to declare that a trade union is not a criminal association, and that a member of a trade union is not to be liable to criminal prosecution for conspiracy or otherwise, because the purposes of the trade union are in restraint of trade (Trade Union Act 1871, Section 2).

In spite of this provision, trade unionists found themselves still liable to be prosecuted for the crime of conspiracy if, acting in combination with each other, in the course of a strike, they did certain acts which are essential to the successful conduct of a strike and are not in themselves criminal. Matters were brought to a head by the case of *Reg. v. Bunn and four others*, tried at the Old Bailey in December 1872. These five men, employees of the Gas Light & Coke Company, had, in the course of a dispute with their employers, struck work, *i. e.* they had in agreement with each other simultaneously broken their contracts of service. Mr. Justice Brett having ruled that such an agreement would amount to an unlawful conspiracy, and the jury having found the men guilty of so agreeing, a sentence of twelve months' imprisonment with hard labour was passed. The agitation which followed this conviction bore fruit in the passing of the Conspiracy and Protection of Property Act of 1875. By section 3 of this statute it was enacted that an agreement by two or more persons to do any act in contemplation or furtherance of a trade dispute is not a criminal conspiracy,

unless that act would be a crime if committed by a single person.

To remove certain doubts as to the liability of strikers and organizers of strikes to be sued in tort for conspiracy it has been enacted, by Section 1 of the Trade Disputes Act 1906, that where two or more persons agree to do, and do, an act in contemplation or furtherance of a trade dispute, they cannot be sued in tort, unless the act would be a tort if done without any such agreement.

If the wording of section 3 of the Act of 1875 be compared with the definition of conspiracy on p. 99, it will be seen that in cases of trade disputes there is only one form of conspiracy which is punishable, viz. a conspiracy to commit a crime; outside the region of trade disputes there are numerous other forms of punishable conspiracy. But the partial immunity thus bestowed on strikers and the organisers of strikes is subject to certain exceptions stated in sections 3-5 of the Act.

The immunity given by section 3 cannot be claimed in respect of acts which amount to unlawful assembly, riot, breach of the peace, sedition,¹ or any offence against the State or the Sovereign, nor can it be claimed in respect of any conspiracy which is made punishable by Act of Parliament.

Moreover, the section contains a definition of crime which covers the acts prohibited by sections 4 and 5, so that any agreement to commit any of these acts is punishable as a criminal conspiracy.

¹ *Sedition*.—The Statute 60 Geo. III and 1 Geo. IV, c. 8, Section 1, contains words from which it may be gathered that it is sedition to do any act, or to publish any words, tending to bring into hatred or contempt the person of the King, his heirs or successors, or the Government and constitution of the United Kingdom as by law established, or either House of Parliament; or to excite the King's subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means. Further, according to Stephen in his *Digest of Criminal Law*, it is any act done, or words published, which tend to "incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst the King's subjects, or to promote feelings of ill-will and hostility between the different classes of such subjects."

Section 4 applies only to employees of any company, contractor, or municipal authority engaged in supplying gas or water. Any such employee who wilfully and maliciously breaks his contract of service, knowing that the probable consequences of his so doing will be to deprive the consumers of their supply of gas or water, is liable to a penalty of £20 or to three months' imprisonment. And by section 5 any person who wilfully and maliciously breaks his contract of service or hiring, knowing that the probable consequences of his so doing will be the endangering of life or limb, or the exposing of valuable property to destruction or serious injury, incurs the same liability.

INTIMIDATION, ANNOYANCE, ETC., BY STRIKERS— PEACEFUL PICKETING

While section 3 thus establishes the legality of strikes, section 7 prohibits, under a penalty of £20 or three months' imprisonment, a number of acts of which a strike may be the occasion. The acts thus prohibited are—

1. Using violence to or intimidating any person or his wife or children, or injuring his property.
2. Persistently following any person about from place to place.
3. Hiding the tools, clothes, or other property of any person, or depriving him of or hindering him in their use.
4. Watching or besetting the house of any person, or the place where he resides, or works, or carries on business, or happens to be.
5. Following any person with two or more other persons in a disorderly manner.

Section 2 of the Trade Disputes Act 1906, which is headed "Peaceful Picketing," states one exception to the law contained in section 7 of the Act of 1875. This exception is in the following terms: "It shall be lawful for one or more persons, acting on their own behalf, or on behalf of a trade union, or of an individual employer or firm, in contemplation or furtherance of a trade dispute, to attend

at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

It will thus be seen that picketing is only lawful when—

1. It is peaceful.

2. It is for the purpose of obtaining or communicating information, or for the purpose of persuading a person to work or not to work.

Effect was given to these limitations by the Scottish Courts in the case of *Wilson v. Renton* [1910], S.C. 32. A number of strikers followed two non-strikers through the streets from the workshop to their homes. It was proved that the strikers did not receive any information from the non-strikers, and did not communicate any to them—in fact, they had not even spoken to them. This fact prevented the strikers from taking advantage of Section 2 of the Trade Disputes Act, and they were convicted.

The same case illustrates in a remarkable way the strictness with which the authorities can enforce the law regarding "persistent following" and "watching and besetting." During a strike in an Edinburgh brewery a number of the strikers assembled outside the brewery at the dinner hour, followed two of the non-strikers through the streets to their homes, waited till they came out again, and then followed them back to the brewery. The crowd was not disorderly and no violence was used, but the feeling was, of course, hostile, and there were shouts of "scab" and "blackleg," though it was not known who uttered these words. On these facts several members of the crowd were convicted on the charge of "persistent following."

One of the strikers remained in the street near the house in which a non-striker lived, and when the latter came out of his house the watcher gave a signal to the others. These then formed up into ranks and followed the man back to his work. This man was convicted of the offence of "watching and besetting."

Smith v. Thomasson (16 Cox. C.C. 740), which was decided in 1890, was a similar case. Smith was a picket who had been posted outside a workshop during a strike. Thomasson was a workman who, with several others, had taken the place of the strikers. When Thomasson came out of the workshop Smith followed him silently down two streets. A crowd of strikers also followed with hostile words and gestures. Smith was afterwards convicted of the offence of "persistent following."

If a large crowd assembles for any of the purposes forbidden by the Section every member of the crowd is, in law, guilty of the illegal acts committed by it if he is there of his own free will. Thus, in the Scottish case of *M'Kinlay v. Hart* (Cases in Court of Session, 4th series, 25 (J) 7), a hostile and disorderly crowd followed three workmen, "booing" and shouting at them in order to compel them to abstain from working. It was proved that a certain workman was one of this crowd, and had joined it of his own accord. But it was not proved that he, personally, had "booed" or shouted. Nevertheless he was convicted. The Lord Justice Clerk said that it was quite unnecessary that the man himself should have "booed" or shouted. If the crowd did that every person in it was guilty of "booing" and shouting, unless he was there accidentally or for some legitimate purpose, such as trying to induce the others to desist.

Picketing may very quickly degenerate into intimidation, or, by causing an obstruction, become a common law nuisance. The courts, moreover, have shown a tendency to construe Section 2 of the Trade Disputes Act (and a somewhat similar provision in the Act of 1875 which it replaced) with great strictness. Therefore in making arrangements for picketing, care should be taken to avoid anything which suggests intimidation. Thus, the number of pickets stationed at any one place should not be great, the pickets should be well under the control of the organisers of the "movement," and they should be men of a sober and unexcitable temper. It should be remembered

that insulting remarks and gestures, or persistence in offering persuasion or information to those who do not desire to receive it, may be sufficient to constitute intimidation.

The case of *Curran v. Treleaven* [1891], 2 Q.B. 545, furnishes an excellent example of how information may be communicated in a trade dispute without intimidation. The members of a trade union resolved at a meeting that unless a certain employer ceased to employ non-union men the union men should be called out. In pursuance of this resolution Curran made the following statement to Treleaven's men and others in Treleaven's presence: "Inasmuch as Mr. Treleaven still insists on employing non-union men, we, your officials, call upon all union men to leave their work. Use no violence, use no immoderate language, but quietly cease to work and go home." On hearing the statement the men ceased to work: Held, that Curran had not been guilty of intimidation within the meaning of Section 7 (1) of the Conspiracy and Protection of Property Act.

The Trade Disputes Act, in legalising peaceful picketing, does not empower the pickets to go upon private property without the occupier's permission. In *Larkin v. Belfast Harbour Commissioners* [1908], 2 Ir. R. 214, a trade union official, without receiving permission from the harbour commissioners, and in defiance of one of their by-laws, went on to a quay and there addressed a crowd of workmen and advised them to go back to work. He was prosecuted under the by-law and convicted. (For further information relating to trade disputes and offences connected therewith see *The Law Relating to Trade Unions*, pp. 117-165, and the Supplement, pp. 86-88.)

Seamen.—Nothing in the Conspiracy and Protection of Property Act 1875 is to apply to seamen or to apprentices to the sea service (section 16). The provisions of the Merchant Shipping Act 1894 relating to discipline among seamen, have already been mentioned. (See pp. 27-28 above.) These render it unnecessary to apply the Act of 1875 to

seamen, while section 236 makes it an offence (punishable by fine) to harbour deserters or to persuade a seaman to desert or refuse to join his ship or go to sea.

TRIAL OF CRIMES

Crimes are tried either in courts of summary jurisdiction before justices of the peace, or in courts of quarter sessions or assizes (in London at the Central Criminal Court) before a jury. Trial before a jury is termed trial by indictment, because the grand jury, before the trial, presents a bill of indictment against the accused, specifying the charge or charges on which he is to be tried.

Broadly speaking, one may say that the less serious offences are dealt with in the courts of summary jurisdiction, while the more serious ones go to the quarter sessions or assizes. But any person charged before a court of summary jurisdiction with any offence (except assault) which is punishable by more than three months' imprisonment, may demand to be tried by a jury. A person charged with any offence punishable under the Conspiracy and Protection of Property Act 1875 by a fine of £20 or imprisonment is entitled, under section 9, to be tried by a jury if he demand it (see *Rex v. Mitchell*, 29 T.L.R. 157).

SUMMARY OF STRIKE LAW

It is now possible to review the whole of the position created by a strike or lock-out, and to consider the liabilities and immunities of trade unions and their members and officials, in respect of any alleged wrongful acts committed either before or during a period of industrial warfare.

We have seen that a wrongful act may usually be dealt with either—

(a) By a criminal prosecution and punished by fine or imprisonment; or—

(b) By a civil action brought by the aggrieved party and resulting, perhaps, in pecuniary damages, or an injunction, or both; or—

(c) By a criminal prosecution, and then by a civil action, though this double course is rarely pursued.

As regards the trade union: No civil action can be brought against a trade union in respect of any tortious act committed by or on behalf of the trade union; nor can the funds of the trade union be made liable.

A trade union cannot, since 1871, be treated as a criminal conspiracy so long as it confines itself to activities of a non-criminal nature, though if it should degenerate into an organisation with criminal objects, it could, of course, like any other criminal organisation, be broken up and its funds confiscated.

As regards the officers and members of a trade union—

1. They cannot be sued in a civil action for conspiracy unless the act they have conspired to do is in itself a tort. And they cannot be prosecuted for the crime of conspiracy unless (1) the act they have conspired to do is in itself a crime; or (2) they have offended against the law relating to riot, unlawful assembly, breach of the peace, sedition, or any offence against the State or Sovereign; or (3) they have been guilty of a conspiracy for which a punishment is imposed by any Act of Parliament.

2. They can neither be sued in a civil action, nor prosecuted under Section 7 of the Conspiracy and Protection of Property Act 1875, for serving as pickets if they do so peacefully and for the purpose of obtaining or communicating information, or of persuading any person to work or not to work.

3. They cannot be sued in a civil action for inducing some other person to break a contract of employment or for interfering with another person's trade, business, or employment, or with his right to dispose of his capital or labour as he wills. This provision secures to every trade union officer full freedom of action in cases where it is necessary to advise or direct a cessation of work (with or

without notice),¹ or to bring pressure to bear in an indirect way upon persons acting in opposition to the union. It should be noted that this protection extends to employers as well as workmen, and to lock-outs as well as strikes; but it is forfeited if the induceent or interference is accompanied by intimidation, violence, undue influence, misrepresentation, or other unlawful conduct. Moreover, such unlawful conduct renders those who indulge in it liable to criminal proceedings under Section 7 of the Conspiracy and Protection of Property Act 1875.

IS PICKETING A PUBLIC NUISANCE?

As the words "highway" and "street" will be much used in considering this question it will perhaps be helpful to the reader to say at the outset that, for the purposes of the present discussion, the two terms are almost interchangeable and so wide in their meaning as to include every public out-of-doors place where picketing is likely to take place. A highway is defined in Wharton's *Law Dictionary* as "a public road which every subject of the kingdom has a right to use." The term is not, however, confined to any particular kind of way, for it includes any road, lane, footway, square, court, alley, or passage that has been dedicated to the use of the public for the purpose of passage over it. And the word "street" in various Acts of Parliament is used to include any road, square, alley, thoroughfare, public passage, lane, footway, court.

The question whether picketing is a nuisance must be considered in the light of—

- (a) the rules of the common law;
- (b) the provisions of numerous Acts of Parliament passed to secure the good government of towns, and

¹ It should not, however, be forgotten that workmen leaving work without serving the notice agreed upon in their contracts of service are liable to pay damages for breach of contract; and proceedings to recover such damages may be brought either in a county court or in a police court. (See p. 15 above.)

bestowing on local authorities in many cases the power to make by-laws for their districts.

Nuisance at Common Law.—The public have a right to full, free and uninterrupted passage along every highway, and any obstruction or act which renders the highway less commodious to the members of the public is a public nuisance and may be punished by fine or imprisonment, or both. It is, of course, clear that each person's right to free and uninterrupted passage is subject to every other person's right to the same. Thus, where large numbers of people are moving in different directions along a street the passage of each is far from being free and uninterrupted, yet no one's rights of free passage are infringed. Moreover, the public in their use of a highway or street, are not restricted to the mere right to pass along it. The essential purpose of a highway is for passing, but, according to Lord Esher,¹ things are done upon highways by everybody which are recognised as being rightly done and as constituting a reasonable and usual mode of using a highway as such. If a person on a highway does not transgress such reasonable and usual mode of using it he will not be a trespasser.

There is a very old case, *Rex v. Sarmon*, 1 Burr 516 (1758), which illustrates this common law right to use a highway for other purposes than mere passage. A man was employed for several days, and for four hours per day or more, to deliver handbills in Ludgate Hill, London. His employer was indicted for the nuisance of obstructing and impeding the footway, but as the report of the case quaintly states "the Court made no sort of difficulty to quash the indictment."

It would seem that if distributing handbills for several hours per day and for several days is a "reasonable and usual mode" of using a highway, then so is "attending at or near a house or place where a person resides or works or carries on business or happens to be," if the attendance is "merely for the purpose of peacefully obtaining or

¹ In *Harrison v. Duke of Rutland* [1893], 1 Q. B. 142.

communicating information, or of peacefully persuading any person to work or abstain from working." The right of every citizen to pass along the highway or to use it for other purposes, *e. g.* to distribute bills, or to enter into conversation with other users of the highway, may, however, be exercised in a such way as to interfere with the corresponding rights of other citizens. Thus, a man may ride his horse furiously along a crowded street, or a number of men may stretch themselves across the street in a chain occupying the whole width of the thoroughfare, or a distributor of bills may cause a crowd to congregate about him. [In each of these cases a nuisance is committed, because the highway is obstructed or rendered less commodious to the public. Similarly, if pickets perform their operations in such a way as to cause an obstruction or to render the highway or street less commodious to the *public*—not to the employer whose premises are being picketed—they are guilty of a public nuisance, for though Section 2 of the Trade Disputes Act declares it to be lawful to "attend at or near" a place, etc., it does not declare it lawful to create an obstruction.

The case of *Reg. v. Lewis* (*The Times*, November 19, 1881) illustrates well how an undoubted right—the right of a tradesman to use his own shop-windows for advertising—may by excess in its exercise degenerate into a nuisance. The keepers of a general store in Manchester, in order to attract the notice of customers, exhibited in their windows photographs (some of them of a comic kind) of eminent men. Crowds of people assembled to look at the photographs, so that the pavement was blocked. The neighbours complained and the Manchester Corporation remonstrated with the occupiers of the shop but without result. They then prosecuted the occupiers for a nuisance and secured convictions.

Statutory Nuisances.—By the Municipal Corporations Act 1835, Section 90; the Municipal Corporations Act 1882, Section 23; and the Local Government Act 1888, Section 16;—Borough and County Councils are empowered

to make suitable by-laws for the good rule and government of the boroughs and counties, and for the prevention and suppression of nuisances.

In the Town Police Clauses Act 1847, model by-laws relating to matters of local government are set out for the benefit of local authorities of certain towns and districts who may incorporate them in their own by-laws. By the Public Health Act 1871 these model by-laws are made available for urban districts. Section 28 of the Act of 1847 contains the by-law relating to street nuisances in the nature of obstruction.

The Highway Act 1835, Section 72 deals with obstructions on highways generally.

The effect of these Acts, and of the by-laws made under them, is to make it an offence everywhere to wilfully cause an obstruction in any public footpath or thoroughfare to the annoyance of the residents or passengers.

Under the Town Police Clauses Act 1847, Section 21, the local authorities are empowered to make orders from time to time for preventing obstructions of the streets in any case when they are thronged or likely to be obstructed. Wilful breach of any such order is a punishable offence. In the Metropolitan Police District the Commissioners of Police have almost identical powers under the General Police Act 1839, Sections 52-54.

Constables are empowered, both by the Town Police Clauses Act 1847, and the General Police Act of 1839 for the Metropolis, to arrest without warrant any persons committing offences against the Acts.

The following cases illustrate the application of the various statutes to charges of obstructing the highway, etc.—

Reg. v. Long, 59 L.T. 33 (1888). Three youths were standing on the pavement in the street of a certain town blocking up the way. A constable asked them to move on, whereupon they walked abreast along the pavement, causing passengers whom they met to go on to the road. They were summoned under Section 28 of the Town Police Clauses Act 1847, and convicted of causing an obstruction.

The conviction was, however, quashed. It appeared that no complaints had been made and no persons had been called upon to prove that they had been impeded, nor could the name of any persons who had been obstructed be given. Mr. Justice Field also appeared to think that the youths, though rude and unmannerly, had done no more than exercise their own right to use the road. His lordship asked: "If a man is large enough himself to occupy the whole of the side path, and in consequence a lady has to leave the path, is that an offence?"

The case of *Wemyss v. Black*, 8 R. (4th series), (J.) 25, was brought under the Police Improvement (Scotland) Act 1862, Section 251, the wording of which closely follows that of Section 28 of the English Town Police Clauses Act 1847. It was held that "causing an obstruction in the public footpath of a street by means of congregating to the obstruction and annoyance of the residents or passengers" was not an offence under the section.

In *Horner v. Cadman* (55 L.J.M.C. 110 [1886]), Horner came with a band to an irregular triangle of land where six highways met, and which was itself part of the highway. A crowd of 150 to 200 persons gathered and he addressed them for an hour and a half. During this time it would have been difficult and dangerous for any one to walk or drive across the part of the highway where the crowd was, though there was a passage round the crowd available for traffic: Held, that Horner was rightly convicted of wilfully obstructing the highway under Section 72 of the Highway Act 1835. *Back v. Holmes* (57 L.J.M.C. 37 [1887]) was a similar case under the same section. A preacher and several women standing on private property conducted a religious service and caused a crowd to assemble in the highway near. He was convicted of unlawfully and wilfully obstructing the free passage of the highway.

Picketing, then, is not in its nature a nuisance. To constitute a nuisance there must be something more than attending at a place, etc., to obtain or communicate

information. There must be something amounting to an obstruction of the street or highway, so that the general public suffer annoyance or are placed in danger. It is not enough that the person picketed is annoyed. He, like any other member of the public, may institute proceedings if the police do not, but he must prove annoyance or danger to others as well as himself.

As a prosecution of pickets, if it takes place, will most likely be under a by-law of the local authority, organisers of strikes and lock-outs should consult the by-laws of their town or district, and, as far as possible, adapt their operations to the requirements of these. It is a good thing before picketing begins, to consult the police with a view to arriving at some agreement with them whereby the peace may be preserved without the efficacy of the picketing arrangements being diminished in any way. As the police have no power (since the passing of the Trade Disputes Act), to forbid picketing, it is to their interest to have a working arrangement with those who control the pickets.

A careful scrutiny of the by-laws may, possibly, reveal some flaw or irregularity in them. The fact that by-laws have been approved by the Local Government Board or a Secretary of State is not conclusive as to their legality. A by-law which contravenes the general law or is in opposition to some specific enactment is invalid. A Local Government Board Circular, issued in September 1878, says, that "in framing by-laws it is essential to bear in mind that they must be reasonable, and that the restrictions which they impose shall not interfere oppressively with the reasonable rights or claims of those whom they are intended to control."

The picketing arrangements themselves should be such as not to cause any obstruction or annoyance to the general public or to provoke any breach of the peace. Much trouble may be avoided by making a careful choice of the men who are to act as pickets.

CHAPTER III

THE LEGAL POSITION OF TRADE UNIONS

Corporations.—Before discussing the status and powers of trade unions it may be useful to say something about the nature of a corporation. A corporation may be defined as a body of persons¹ regarded by the law as possessing some of the attributes of a single person and therefore often described as a fictitious person. The fictitious person known as the corporation differs from an ordinary person in the following respects—

1. It is immortal, the individual members die or withdraw from the body, but the body as a whole never ceases to exist.

2. It can act only through its agents.

3. It must possess a seal which is necessary to give authority to all important undertakings.

4. It cannot commit a crime. The majority, or even the whole of the members, may authorise or commit a criminal act, but they do so in their individual capacities, and they are individually liable as ordinary persons.

5. The freedom of action of a corporation is, with possibly one unimportant exception, limited by the doctrine of *ultra vires*.

From the nature of a corporation there flow certain consequences which are of great practical convenience in everyday life: (1) A corporation can, subject to certain restrictions on its ownership of land, acquire and own property and dispose of it in its own name; (2) it can sue and be sued in the law courts in its own name.

How a Body becomes a Corporation.—The mere coming

¹ A corporation may consist of a single person, *e. g.* the King, the parson of a parish, the public trustee. These are known as corporations sole.

together of a number of persons for a common purpose does not in law make them a corporation. Definite recognition of the body as a corporation by those in authority is necessary. The authority to assume the name and status of a corporation may be given to a number of persons by royal charter or letters patent. Thus the East India Company, the Hudson Bay Company, and, in later times, the British South Africa Company, were all incorporated by royal charters, as were large numbers of boroughs in ancient times. In modern times corporations are usually constituted by Act of Parliament. Thus county councils, borough and district councils, and boards of guardians are all stated to be corporations by the various Local Government Acts creating them. Railway companies, too, are corporations in virtue of the statutes creating them. Limited liability companies are statutory corporations created, not by special and separate statutes, but by administrative procedure prescribed by various statutes extending over a period of more than half a century and now consolidated into one statute, the Companies (Consolidation) Act 1908. Under this statute any body which complies with the provisions of the Act is entitled to be registered by the Registrar of Joint Stock Companies and the act of registration makes it a corporation. Similarly the registration of a society under the Industrial and Provident Societies Act 1893 renders it a corporation. And a body of trustees for a religious, educational, literary, scientific, or public charitable purpose may, on fulfilling the conditions of the Charitable Trusts Incorporation Act 1872, obtain from the Charity Commissioners a certificate constituting them a corporation. By Section 20 of the Companies (Consolidation) Act 1908, an association formed for promoting commerce, art, science, religion, charity, or any other useful object not being for the personal profit of its members, may be registered as a company and so incorporated. Such a company need not add the word "Limited" to its name, though its liability will be limited.

There is a third method of incorporation. Where a body of persons have, from time immemorial, acted as a corporation, the law will recognise them as a corporation. Such a corporation is said to be a corporation by prescription.

Unincorporated Associations of Persons.—There are in this country innumerable bodies of persons acting in a corporate manner, but which are not corporations: *e. g.* social clubs, political associations, congregations of free churches, hospital committees, and various other charitable associations. A body such as one of these is not treated in law as one person. If a dispute arises affecting the interests of the members they must all sue or be sued, or certain of them may sue or be sued as representing the whole number. The property of the body is the property of all the members jointly, though, for purposes of convenience and safety, it is vested ¹ in trustees who manage it in the interests of all, who sue and are sued in all actions concerning it, and who are answerable for their management of it to the whole body.

Such a method of conducting business may often prove cumbrous and inconvenient, and the Charitable Trustees Incorporation Act of 1872 was therefore passed. This, as we have seen, makes it possible to convert certain specified trusts into corporations.

✓ *The Status of the Trade Union.*—A trade union is not a corporation, for no trade union has ever received a charter making it a corporation, the Trade Union Acts 1871–1913 do not incorporate trade unions, and no trade union has ever established a right by prescription to be considered a corporation. It is a mere association of persons for certain common purposes, and in this respect resembles a club, or political, religious, or charitable association. Like these associations its property is vested in trustees.

¹ Property is said to be vested in a person when he is the legal owner of it. Trustees are the legal owners of the trust property, but they can only exercise the powers of ownership in accordance with the terms of the trust. (See pp. 134–160 below.)

Nevertheless a trade union is, in some respects, so much like a corporation that in the Taff Vale case (*Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901], A.C. 426) it was said to be a quasi-corporation, and it was decided that it could sue and be sued in its registered name. This judicial pronouncement was in direct opposition to the generally established opinions regarding trade union status. It had been thought that trade unions, being illegal at common law, were outside the jurisdiction of the courts and as secure from actions of tort as (under Section 4 of the Trade Union Act 1871) they were secure from actions of contract. Thus, it was thought that they and their funds could not be made liable for the wrongful acts of officials committed in the course of their duty as officials. Each official was, it was thought, individually responsible for any wrongful act he might commit, and he and he alone could be sued by the injured party and made to pay damages.

The Taff Vale decision was in a measure reversed, and the immunity of trade union funds from vexatious litigation re-established by the Trade Disputes Act 1906. (This Act is fully dealt with on pp. 83-94.)

The Doctrine of "Ultra Vires."—While a natural person is legally entitled to do anything which is not specifically forbidden to him by law, the fictitious person, known as a corporation, can pursue only those objects which are sanctioned by the instrument creating it. Any act not sanctioned by the instrument is beyond the corporation's powers, i. e. *ultra vires*. Thus, a corporation created by royal charter has in effect no powers other than those bestowed upon it by the charter, and a statutory corporation has no powers other than those bestowed upon it by the Act of Parliament which made it. Similarly an incorporated charitable trust is limited in its acts by the powers created by the instrument of trust. It is in accordance with this doctrine that municipal authorities can be restrained from engaging in activities that Parliament has not sanctioned, and so the London County Council, while it possessed

powers for running tramcars, was restrained from running a service of omnibuses (*Attorney-General v. L.C.C.* [1902], A.C. 165).

A joint-stock company registering itself under the Companies Acts lodges with the Registrar a copy of its memorandum of association, in which the objects of the company are stated. And no objects other than these must be attempted. Therefore a company whose memorandum of association states that its objects are the manufacture and sale of boots and shoes would be restrained from carrying on a business for the manufacture and sale of motor-cars.

The legal restraints thus put upon the activities of corporations probably owe their origin to the distrust felt by the Governments of an earlier period for associations of persons exercising the unlimited freedom of an individual and yet possessing wealth and power far beyond those of any single person. In later times the application of the doctrine of *ultra vires* to limited companies is justified by practical necessity. Members of the general public invest money in a limited company on the understanding that it will be used for the purposes stated in the memorandum of association, and having confidence that the pursuit of those purposes will be profitable. They are therefore entitled to insist that the company shall not use their money for any other purpose. Again, a company carrying on a certain business obtains credit from other traders who believe that the business as conducted is a sound one. These, too, have a right to expect that the company will confine itself to its prescribed objects and will not embark on new courses which may lead to financial disaster.

Trade Unions and the Doctrine of "Ultra Vires."—Previous to the Osborne Judgment (*Amalgamated Society of Railway Servants v. Osborne* [1910], A.C. 87) a trade union felt itself free to engage in whatever activities it deemed desirable, provided (1) that these activities came within the scope of trade unionism as understood and

practised for more than half a century; (2) that these activities were sanctioned by the rules of the trade union. It was, of course, an accepted rule of law that the aid of the courts might be invoked to prevent a union from acting in a way not sanctioned by the rules. But it was not considered that a court of law had a jurisdiction to declare what the purposes of a trade union were, and to treat as *ultra vires* and illegal all rules not conforming to such purposes.

The Osborne case was an action brought by a member of the Amalgamated Society of Railway Servants against the society. Under its rules the society provided that each member should subscribe 1s. 1d. per annum to a Parliamentary Representation Fund, which was to be spent in securing the election of labour members to Parliament, and in providing for their maintenance while there. All candidates accepting the help of the society were to be bound by the constitution of the Labour Party. The plaintiff, a Mr. Osborne, objected to this levy and asked the court to restrain the society from enforcing it. He was successful, and the House of Lords in giving judgment in his favour defined the legal position of trade unions more clearly than it had ever been defined before, with the result that the scope of trade union activity was considerably restricted. Briefly, the result of the judgment was as follows—

1. Parliament, in legalising trade unions by the Acts of 1871 and 1876 defined the purposes for which they exist.

2. These purposes, which are set forth in section 16 of the Act of 1876, are (a) regulating the relations between workmen and masters; (b) regulating the relations between workmen and workmen; (c) regulating the relations between masters and masters; (d) imposing restrictive conditions on the conduct of any trade or business.

3. As subsidiary to these purposes trade unions have also, from their first beginnings, provided certain benefits for their members after the manner of friendly societies.

These, though not specifically mentioned in section 16 of the Act of 1876, are indirectly recognised both in the Act of 1871 and in that of 1876, and are clearly within the powers of a trade union.

4. All other purposes are *ultra vires*, whether they are provided for in the rules or not.

5. The obtaining of the representation of labour in Parliament and on local governing bodies is not a means of regulating the relations between workmen and workmen or between workmen and masters, and any trade union rule which makes provision for it is *ultra vires*.

The Trade Union Act 1913.—The law, as thus interpreted by the House of Lords, was amended by the Trade Union Act of 1913. This Act does not entirely undo the effects of the Osborne decision, but it relieves trade unions of much of the inconvenience which that decision caused.

The following are the essential features of the Act of 1913—

1. A new definition of a trade union is given.

2. With the exception of certain prescribed political objects, a trade union may carry out any lawful objects sanctioned by its rules.

3. The prescribed political objects may be carried out if certain conditions are fulfilled.

The new definition of a trade union is contained in section 1 (2) and section 2 (1) of the Act of 1913. Combining these two sub-sections we arrive at the following definition: The expression "trade union" . . . means any combination, whether temporary or permanent, the principal objects of which are, under its constitution, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefit to members.

If this definition be taken in its strictest sense the effect of the words "and also" seems to be that a body is not a trade union unless its principal objects are at least two

in number, viz.: (1) The regulation of the relations between workmen, etc., etc.; (2) the provision of benefit to members.

The objects thus enumerated in section 1 (2) are known as "statutory objects" and it is to be noticed that the *principal* objects under the constitution must be statutory objects, otherwise the society is not a trade union. Thus, a society does not become a trade union merely by assuming the name of trade union; and a society whose *principal* objects are, in reality, trading or political propaganda, or something else not mentioned in the definition, cannot secure recognition as a trade union by including among its objects some of the statutory objects of a genuine trade union. Moreover, a body that has been registered as a trade union may have its certificate of registration withdrawn if its principal objects cease to be statutory objects.

An unregistered trade union may, without registering, obtain a certificate from the Registrar of Friendly Societies certifying that the union is a genuine trade union, if he is satisfied that its principal objects are "statutory objects."

The Powers of a Trade Union under the Act of 1913. Section 1 of the Act permits a trade union to have, in addition to the statutory objects, any other lawful objects (subject to one exception), and to apply its funds in carrying them out. But the funds cannot be applied to any object which is not authorised by the rules of the union. This section opens up unlimited possibilities of new activities for trade unions. But the sanction of the members must be obtained and must be embodied in the rules. There is a tendency to overlook this necessity when new departures are being made. Trade unions may now own or support newspapers and promote educational and other schemes, even trading schemes, and may finance them if the rules make provision for so doing. If the main object for which a newspaper is conducted is political the rules of the society relating to it must be specially approved according to the provisions of section 3 of the Act. In

Bennett v. National Amalgamated Society of Operative House and Shop Painters it was held that the action of the trustees of the society in purchasing 100 shares in the company which published the *Daily Citizen* was *ultra vires*. (See pp. 58–61 and 158.)

The exception referred to is that of certain political objects specified in section 3 (3). It may be convenient to speak of them as Special Political Objects. These objects are only lawful if carried out in the manner prescribed by the Act.

Special Political Objects.—These are as follows—

1. The payment of the election expenses of candidates for Parliament or local governing bodies.
2. Expenditure of money on election meetings, election literature, political meetings, or political literature.
3. The maintenance of members of Parliament or of local governing bodies.
4. Expenditure of money in registration or in connection with the selection of candidates for Parliament or any local governing body.

It will be noticed that the objects enumerated all involve the spending of money.

Where the main purpose of a meeting is the furtherance of the statutory objects of the trade union, and political business is transacted as a secondary and subsidiary matter, the holding of the meeting is not a special political object. The same distinction holds good with respect to the distribution of literature.

Special Political Objects must be carried out under the following conditions—

1. A resolution approving the special political objects as objects of the union must be submitted to the members and a ballot taken. A bare majority of members voting is sufficient to bring the resolution into force (section 3 (1)).

2. Before the resolution is submitted and the ballot taken the trade union must make rules for the ballot, and these (whether the union is registered or not) must be

approved by the Registrar of Friendly Societies. The rules will not be approved unless (a) every member has an equal right to vote and, if reasonably possible, a fair opportunity of voting; and (b) the secrecy of the ballot is secured (section 4 (1)).

3. The trade union must also have other rules providing—

(a) That there shall be a separate political fund out of which payments for political objects are to be made.

(b) That any member who objects to contribute to the political fund shall be exempted if he gives notice of his objection. The schedule to the Act contains a form of exemption notice.

(c) That exempted members are not to be excluded from any benefits or placed under any disability.

(d) That contribution to the political fund is not to be a condition of admission to membership.

These rules, like the rules relating to the ballot, must be approved by the Registrar of Friendly Societies whether the union is registered or not.

Exempted members cannot, of course, have a voice in the management of the political fund (section 3 (1)). Any member alleging that he is aggrieved by a breach of the rules relating to the special political objects may lodge a complaint with the Registrar of Friendly Societies who has a final jurisdiction in such matters (section 3 (2)).

4. As soon as a trade union has adopted a resolution approving of the special political objects, notice must be given to the members informing them of their right to exemption, and directing them where to obtain a form of exemption notice. The notice must be given in accordance with rules approved by the Registrar, but the Registrar in considering such rules must have regard to the character of the union and to its existing practice of issuing notices to members (section 5 (1)).

In May 1913 the Registrar of Friendly Societies, with a view to assisting trade unions desirous of making alterations in their rules to meet the requirements of the Trade Union Act 1913, issued a Memorandum of

Instructions and a number of Model Rules and Forms. These, which are too lengthy to be set out here, may be obtained from the Registrar.

It should be noticed that the provisions of the Act relating to special political objects are made "without prejudice to the furtherance of any other political objects" (section 3 (1)). Thus any political object which does not come within section 3 (3) is not subject to the special conditions of sections 3 and 4. Lobbying and the drafting and promoting of Bills in Parliament would be such ordinary political objects.

(For further information as to the Trade Union Act of 1913, the Supplement to *The Law Relating to Trade Unions*, pp. 88-110 may be consulted.)

Power to alter Rules.—The power of a trade union to alter its rules depends upon the rules themselves. In strict legal theory it would seem that even if the whole body of members unanimously assent to an alteration of the rules the alteration is invalid if the existing rules of the society do not contain a rule authorising alterations. To avoid a total deadlock in such a case the society might be dissolved and immediately reconstituted with a new set of rules. But according to the dictum of a Scottish judge it is probable that in the case of small societies and societies whose rules have become obsolete this principle would not be pushed to its logical conclusion.

In a Scottish case, *Wilson v. Scottish Typographical Association* [1912], S.C. 534, the rules of an unregistered trade union were not very clear as to the power of the delegate meeting of the society to alter the rules. In commenting on this difficulty Lord Skerrington said that the rules of a voluntary association ought not to be construed in the same manner as if they were the constitution of a statutory body or a partnership contract. Voluntary associations for charitable and other objects usually began in a small way and under a reserved power to amend their rules. Then, from time to time, they enlarge their objects without obtaining the consent of every individual

member. To hold that this familiar practice is illegal would lead to great inconvenience and injustice, because nothing short of a private Act of Parliament would, in that view, entitle a voluntary association to enlarge its objects.

In the case of the *Amalgamated Society of Engineers v. Jones*, 29 T.L.R. 484, one of the rules of the society provided that a delegate meeting should not have power to alter any rule unless notice of the proposed alteration had been given to the members. This does not mean that notice of the identical alteration finally adopted must be given, but that notice of an intention to alter the rule must be given, and the delegate meeting may then, by discussion, alter it as they may think fit. But the latitude thus allowed to delegates is not such as to enable them to abrogate any of the principles of the society without the express sanction of their constituents.

Mr. Justice Bailhache, who tried this case, said that the courts would be very slow to interfere with the purported exercise by a trade union or a friendly society of their rights of self-government. If it was clear that they had exceeded their rights and had done something which was illegal, no doubt the court might interfere, but it would look closely into the facts before it came to the conclusion that a society had exceeded its rights. The court would not act upon a mere informality.

Nevertheless, it is of the highest importance that the rules of every trade union should contain a rule empowering the General Meeting to amend, alter, rescind, or add to the rules in accordance with certain prescribed conditions. The omission of such a rule may bring about a deadlock in the affairs of the society.

REGISTRATION OF TRADE UNIONS

The provisions of the Trade Union Acts 1871, 1876, and 1913, as to registration, etc., of trade unions fall under the following heads—

1. Minimum number of members: Application for registration. Sections 6, 13, T.U.A., 1871. Regulations ¹ 2-4, 11, 24; Forms A, H, I.

2. Certificate of Registry. Section 13 (5), T.U.A., 1871; Section 8, T.U.A., 1876; Section 2 (2), (3), (4), (5), T.U.A., 1913. Regulations, 5, 12, 13, 14, 24; Forms B, J, K, L.

3. Name of Trade Union. Section 13 (3), T.U.A., 1871; Sections 11 and 13, T.U.A., 1876. Regulations 2, 16, 24; Forms N, O.

4. Registered Office. Section 15, T.U.A., 1871; Section 6, T.U.A., 1876. Regulations 15, 15*a*, 15*b*, 24; Form M.

5. Rules. Sections 13 (1) (2), 14, 18; Schedule I, T.U.A., 1871. Regulations 4, 11, 24; Forms H and I; Sections 3 (1) (4), 4 (1) (2), and 6, T.U.A., 1913, and Forms 1-8 issued in pursuance of that Act.

6. Alteration of Rules. Schedule I (3), T.U.A., 1871. Regulations 6-11, 24; Forms C-I.

7. Financial Matters. Schedule I (4), (5), (6); Sections 8, 10, 11, 16, 13 (4), T.U.A., 1871; Sections 3, 4, T.U.A., 1876. Regulations 17-20, 24; Forms P, Q, R; Annual Return Form, A, R, 15.

8. Minors as members. Section 9, T.U.A., 1876.

9. Nominations of persons to receive Insurance Money, etc., on Death. Section 10, T.U.A., 1876. Regulation 23.

10. Amalgamation. Section 12, 13, T.U.A., 1876. Regulation 22; Forms T, U.

11. Dissolution. Section 14, T.U.A., 1876. Regulation 21; Form S.

12. Fees. Regulation 24.

13. Penalty for Failure to give Notice. Section 15, T.U.A., 1876.

14. References to Friendly Societies and Life Assurance Companies. Sections 5, T.U.A., 1871; Sections 2 and 7, T.U.A., 1876.

¹ The regulations and forms referred to are those issued by the Registrar under Section 13 (6), T. U. A., 1871. See *Law Relating to Trade Unions*, Appendices G and H.

Income Tax.—The provident funds of a registered trade union are exempt from income tax, provided that it does not assure payment in respect of any member of a gross sum of more than £300 or of an annuity of more than £52 (Trade Union (Provident Funds) Act, 1893, Section 1, and Finance Act 1910, Section 70.)

REGISTERED AND UNREGISTERED TRADE UNIONS COMPARED

Registered and Unregistered Unions are alike in the following respects—

1. They are both made legal by Sections 2 and 3 of the Trade Union Act 1871.

2. They are equally affected by Section 4 of the Act of 1871 which makes certain agreements not enforceable.

3. Neither can be registered as a Friendly Society, an Industrial and Provident Society, or as a Limited Liability Company (Section 5, T.U.A., 1871).

4. Both are subject to the provisions of Sections 62–67 of the Friendly Societies Act, 1896,¹ if they insure or pay money on the death of a child under ten years of age (Section 2, T.U.A., 1876).

5. Both must satisfy the definition of a trade union contained in the Trade Union Act 1913, Sections 2 (1), and 1 (2). (See p. 121 above; see also Section 2 (3) (4) (5), T.U.A., 1913.)

6. Both are governed by the doctrine of “*ultra vires*” as laid down in the Osborne Case. Thus, the Miners’ Federation of Great Britain, an unregistered amalgamation of numerous trade unions, was restrained from applying its funds to political purposes (*Parr v. Lancashire and Cheshire Miners’ Federation* [1913], 1 Ch. 366).

7. An unregistered trade union whose objects include the Special Political Objects named in Section 3 (3) of the

¹ These sections have replaced Section 28 of the Friendly Societies Act, 1875.

Trade Union Act 1913, must, like a registered union, comply with the requirements of sections 3-6 of the Act; and submit certain of its rules to the Registrar for approval (Sections 3 (1), 4, T.U.A., 1913).

8. An unregistered trade union, no less than a registered trade union, is protected against actions of tort by the Section 4 of the Trade Disputes Act 1906, and is also within section 2 of that Act.

The other provisions of the Trade Union Acts, do not, with one or two exceptions, affect unregistered trade unions. Thus, their financial condition is not subject to the scrutiny of the Registrar, nor need they conduct their affairs on the lines prescribed for registered societies. On the other hand, the members have not that assurance of financial stability and efficient administration which registration in a measure offers. Nor can dishonest officials be dealt with in a summary manner under section 12 of the Act of 1871, though they may be prosecuted under the Larceny Acts (see pp. 148 and 160) or the Falsification of Accounts Act 1875. The liabilities of trustees of unregistered societies are the same as those of ordinary trustees; they cannot claim the partial immunity given by Section 10 of the Trade Union Act 1871 (see p. 157). The exemption from income tax does not extend to unregistered trade unions.

THE AVOIDANCE OF VEXATIOUS LITIGATION BY TRADE UNIONS

Now that the Trade Disputes Act 1906 makes it impossible to bring an action of tort against a trade union, the only litigation in which it is likely to be involved is such as arises out of disputes touching the rules of the society and the contracts embodied in them. With regard to the great majority of trade unionists it is safe to say that when they join a trade union they are willing that any disputes between themselves and the officials of the union shall be settled without recourse to legal proceedings. And with regard to the great majority of trade union

officers it is equally safe to say that they are willing to give to each member his due without legal compulsion.

It has already been pointed out (see p. 49 above) that, prior to 1871, trade unions whose rules constituted an illegal restraint on trade were not recognised by the courts as having any legal standing, and consequently they could neither sue nor be sued. And though trade unions were legalised by the Act of 1871, certain classes of contracts were, by section 4 of that Act, declared to be legally unenforceable if they would have been legally unenforceable before the passing of the Act. The result is that if a trade union is, at common law, an "illegal society" it is useless for any member to seek to enforce any of the contracts specified in section 4 of the Act of 1871. As these specified contracts include most of the agreements which usually exist between trade unions and their members, it follows that, so far as direct enforcement of rules is concerned, the so-called illegal societies are immune from judicial interference.

Apart from the enforcement of rules the law courts have, however, a somewhat wide jurisdiction over even the "illegal" societies. Thus, where the interpretation of a rule is challenged an action may be brought for the purpose of obtaining a judicial declaration as to its meaning. And a member who alleges that he has been wrongfully expelled may bring an action for the purpose of obtaining an order for his reinstatement.

Many trade unions are, however, at common law "legal" societies. These are not only subject to the jurisdiction of the courts in such matters as the correct interpretation of a rule, the alleged wrongful expulsion of a member, etc., but the agreements specified in section 4 of the Act of 1871 may be directly enforced against them.

Both legal and illegal societies may, to a large extent, exclude the jurisdiction of the courts over their affairs by inserting in their rules suitable arbitration clauses, providing that all disputes shall be settled by arbitration.

In view of what has been said on p. 2 above, as to implied assent to conditions in an agreement, it is advisable that a member on joining a society should have his attention drawn to the arbitration clause. He might even be required to sign a statement that his attention had been drawn to it, and that he assented to it.

The arbitration clause should either specifically name some person or persons to act as arbitrator or arbitrators, or it should specify the method by which the arbitrator or arbitrators shall be appointed when required.

The writer is strongly of opinion that the various trade unions of the country should establish a central court of arbitration to which disputes between trade unions and their members might be referred for final settlement. Any dispute would, of course, in the first place, be decided by the arbitrator or arbitrators appointed under the rules of the society concerned, either party then having the right to appeal to the central court of arbitration, whose decision would be final. Such a central court being composed of members drawn from the trade union movement as a whole, could not be suspected of partiality, and it would be no hardship for any member of a trade union to exchange his right to go to law for the right to submit his grievance to such a tribunal.

It is scarcely necessary to say that the trade union should also bind itself to submit to arbitration any claim it may have against a member.

Where a person who has agreed to submit a dispute to arbitration commences legal proceedings in breach of such agreement, the court will, on the application of the other party, stay such proceedings. (See Arbitration Act 1889, Section 4.)

To avoid trouble in connection with the expulsion of undesirable members the trade union should have rules stating the grounds on which a member may be expelled, and providing that before expulsion is ordered the member shall be informed why it is proposed to expel him, and be given an opportunity of defending himself.

The following rule of the General Federation of Trade Unions, National Insurance Side, will serve as a model of the kind of rule required for this purpose—

Where it is alleged of any member that he has been guilty of conduct which renders him liable to a fine, suspension, or expulsion the following procedure shall be resorted to—

(a) The member or members making the allegations shall state in writing the charge or charges which they desire to bring against the member concerned, and shall send the statement to the secretary of the society.

(b) The secretary shall lay the statement before the committee of the society at the next meeting thereof.

(c) If the committee is of opinion that the charge or charges, or any of them, should be inquired into, a special meeting of the committee shall be summoned to conduct the necessary inquiry. The date of the meeting of the committee shall be not more than four weeks from the time of the committee's decision to summon such meeting.

(d) The secretary of the society shall give the accused person not less than two weeks' notice of the meeting, and shall request him to be present thereat, and shall send with the notice a sufficient statement of the charge or charges made against the accused person.

(e) The accused person shall be entitled to be present at the special meeting, and shall be allowed full opportunities of defending himself.

(f) If a two-thirds majority of the committee is of opinion that the accused person should be fined, expelled, or suspended, he shall be fined, expelled, or suspended, accordingly.

Rules should be Complete and Clearly Expressed.—It is, of course, impossible for any trade union, whether an "illegal" society or not, to hope to remain entirely free from liability to legal actions. Even when the jurisdiction of the courts is excluded by section 4 of the Act of 1871, or by an arbitration clause in the rules, the court may have to decide whether their jurisdiction is excluded,

and if so, to what extent. In such cases the decision will depend on the judicial reading of the rules. It is therefore necessary for all trade unions which desire to conduct their business free from external interference to have their rules as clear and effective as it is possible to make them. If the society relies on the fact that it is an "illegal" society, then its trade rules and its friendly society rules should be so carefully worded, and so unmistakable in their meaning, that no competent and responsible lawyer could, with any hope of success, advise the institution of legal proceedings against the society. And if the society, by an arbitration clause, seeks to keep its affairs outside the jurisdiction of the courts, then the provisions relating to arbitration must be as clear and specific and complete as possible, so that there may never be any need for an appeal to the courts to explain doubtful points or to make good omissions.

A very frequent cause of trade union litigation is the ambiguity and incompleteness of the rules in matters of detail. The following are a few of the common errors which the writer has noticed in the various sets of rules which have come under his notice—

1. The use of different names for the same thing or the same official in different parts of the rules.
2. The existence of provisions which contradict one another.
3. The omission of a rule authorising the society to make changes in the rules.
4. The omission to make definite provisions relating to the work of the society and showing clearly the powers which the society has a right to exercise on behalf of its members.

Such omissions and doubtful points leave the door open to outside interference at the suit of any dissatisfied member.

The mode of application of the funds of a trade union is a question which can, by no means, be removed outside the jurisdiction of the courts. Whether a society is

“ legal ” or “ illegal ” the courts will restrain the trustees from applying the funds to purposes not sanctioned by the rules, though, in the case of an “ illegal ” society, they will not direct how the funds should be applied. It is therefore very necessary that trade unions in drafting their rules should make proper provision for all the lawful acts which they desire to perform, and that they should keep strictly within the limits of such provisions.

CHAPTER IV

TRUSTS AND TRUSTEES

A TRUST is a species of contract by which one person becomes the owner of property, but is bound to deal with it for the benefit of another.

The person who thus becomes the owner of the property is named the trustee, and the other person for whose benefit the property is to be applied is named the beneficial owner, or beneficiary, or *cestui que* trust. More than one trustee may be appointed for trust property, and there may also be more than one beneficiary. It is even possible for a person to be both a trustee and a beneficiary of the same property. Thus, A, being about to marry B's daughter, may settle certain of his own property on himself and B jointly on trust to pay the income to the wife during her life, and on her death to A for his life, the property being divisible amongst the children of the marriage after A's death. In this case A is a trustee during his wife's life, and on her death he is both a trustee and a beneficiary.

A breach of trust is any unauthorised dealing with the trust property by the trustee, or any inexcusable neglect with regard to it.

The property which is the subject of a trust may be either real property (*i. e.* land, buildings, etc.) or personal property, such as money, goods, stocks, shares, the right to recover a debt, etc., etc.

In ancient times courts of law recognised only the trustee's ownership of trust property, and if a trustee misapplied the property to his own use the beneficiary had no legal redress, for, in the eyes of the law, the trustee,

though morally dishonest, was legally only dealing with his own property. But the King, as the fountain of justice, and acting through his Chancellor, would, if appealed to by a disappointed beneficiary, compel a trustee to carry out the terms of the trust. Proceedings for the enforcement of trusts were thus taken in the Chancellor's Court—the Court of Chancery. As this court was governed by equitable principles rather than by principles of strict law, it was termed a Court of Equity. Thus the interest of the beneficiary in trust property came to be called an equitable interest, because it could only be enforced in a Court of Equity. Since the year 1873 all our courts recognise and enforce equitable principles as well as legal principles, though, for purposes of convenience, the enforcement of trusts has been assigned to the Chancery Division. But though the beneficiary can now enforce his right to enjoy the trust property, it must be borne in mind that the trustee is still the owner; and many important consequences follow from this: *e.g.* the trustee must, as a rule, be a party to any dealings with the property.

Where a trust is created intentionally, it is termed an Express Trust. Thus, A conveys a house to B and C upon trust to apply the rent in maintaining and educating a number of orphan children. Where there is no intention to create a trust, but, as a result of dealing with property, one person comes to be the legal owner of it, while another has the right to enjoy it, an implied or constructive trust is created. Thus, A conveys property to B upon trust to pay the income of it to C for ten years. C dies at the end of a year. B now holds the property on trust for A, the original donor.

Or B holds leasehold property on trust for A. The lease expires, and B thereupon induces the landlord to grant him a renewal of the lease for his own benefit. B's bad faith will not, however, avail him anything, for in equity a constructive or implied trust in A's favour has arisen.

When a trust is an express trust the purposes for which it is created, the manner in which the property is to be used, and any other directions to the trustees are set forth in the instrument of the trust. This may be either a "trust deed" or some less formal document. Thus, in the case of trade unions and many other associations, the terms on which the trust is to be administered are to be found in the rules of the society.

THE DUTIES OF A TRUSTEE

I.—Before accepting the trust it is the trustee's duty to disclose any circumstances which might lead him to act unfairly in carrying out the terms of the trust.

II.—He should obtain all necessary information regarding the trust property and any documents concerning it which come into his possession, and he should study carefully the terms of the trust.

III.—He should take immediate steps to have the trust property transferred to him, unless it vests in him automatically by virtue of his becoming a trustee, as in the case of certain forms of trade union property. (See p. 155.)

IV.—In the conduct of the affairs of the trust he must be guided by the terms of the trust instrument, and he must not depart from these except by the consent of all the beneficiaries.

V.—In the conduct of the affairs of the trust he must use the same diligence and care that a man of ordinary prudence and foresight would use in the conduct of his own affairs. In the event of any difficulty or emergency occurring not provided for by the terms of the trust instrument, or in the event of any doubt as to the intention of the creators of the trust, the trustee may apply to the court for permission to depart from the terms of the trust, or he may ask the court to declare the meaning of any ambiguous provision in those terms.

This general duty of exercising reasonable diligence and care includes the following—

(a) The duty to get in all debts due to the trust estate, taking legal proceedings if other means fail.

(b) The duty of securing the trust property against loss or theft. It is advisable to make an inventory of all the movable property.

(c) The duty of investing trust moneys without unreasonable delay. Neglect to do this may result in his having to pay interest out of his own pocket.

(d) The duty of keeping trust premises in a proper state of repair.

(e) In selling, letting, mortgaging or otherwise disposing of trust property it is the trustee's duty to avoid making rash or improvident bargains, and similarly in buying, hiring, or taking a mortgage on property. It is often advisable in such transactions to have expert advice. In particular, where property is being bought or money is being lent on mortgage, the trustee should satisfy himself that the seller or mortgagor has a good title to it.

VI.—In the investment of trust funds two classes of securities are open to a trustee—

(a) The various securities authorised by Section 1 of the Trustee Act 1893.

(b) The securities authorised by the terms of the trust itself.

But if the instrument of trust expressly forbids the trustee to invest in the securities authorised by the Trustee Act he is bound by the prohibition. Moreover, the fact that a contemplated investment is authorised by the Trustee Act, or by the instrument of trust, does not absolve the trustee from exercising reasonable diligence and care. Thus, a heavy depreciation in an authorised security might make it no longer suitable for a trustee to invest in.

But it is not in itself a breach of trust for a trustee to continue to hold an investment which has changed its character, so that it is no longer an investment of the kind authorised by the instrument of trust or by the general law (Trustee Act Amendment Act 1894, Section 4).

Caution is especially needful where money is lent out on mortgages of real property (referred to in paragraph (b) of Section 1 of Trustee Act as “real or heritable securities.”) But where a trustee acts under the advice of an independent and capable surveyor or valuer, and obtains from him a report on the value of the property, and the amount of the loan does not exceed two-thirds of such value, no breach of trust is committed if subsequently it appears that the margin between the amount of the loan and the value of the security was too small. (See Section 8, Trustee Act 1893.)

Section 1 of the Trustee Act 1893, authorising certain investments for trustees, is as follows—

INVESTMENTS

1. A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

(a) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom :

(b) On real or heritable securities in Great Britain or Ireland :

(d) In India Three and a half per cent. stock and India Three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India :

(e) In any securities the interest of which is for the time being guaranteed by Parliament :

(f) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District :

(g) In the debenture or rent-charge, or guaranteed or preference stock of any railway company in Great Britain

or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of the investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock :

(*h*) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (*g*), either alone or jointly with any other railway company :

(*i*) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India :

(*j*) In the " B " annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council in India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants Class C of the East Indian Railway Company :

(*k*) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed :

(*l*) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock :

(*m*) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having,

according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order :

(n) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied :

(o) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court,

—and may also from time to time vary any such investment.

This list has been added to by subsequent statutes. Thus, the Colonial Stock Act 1900 empowers traders to invest in any Colonial Stock registered in the United Kingdom, and with respect to which certain conditions prescribed by the Treasury have been observed. The Metropolis Water Act 1902 adds to the list of authorised investments the “ B ” stock of the Metropolitan Water Board.

The War Loan is, of course, an authorised investment, and trustees holding securities convertible under the War Loan Trustees Act 1915 are empowered by section 1 of that Act to borrow money for the purpose of—

(a) Paying any balance which is payable on converting the securities into War Loan securities.

(b) Paying the expenses of such borrowing.

Section 3 of the same Act exempts trustees from liability for any loss resulting from—

1. Any borrowing under the Act.

2. Any subscription to or investment in the War Loan.

3. The sale of any securities for the purpose of such subscription or investment.

4. The exercise of any option to convert securities under the Act.

The investments authorised by the High Court under paragraph (o) of Section 1 of the Trustee Act are set out in Order XXII, Rule 17, of the Rules of the Supreme Court. Under this paragraph the court has modified paragraph (g) to the extent of permitting the investments there mentioned, provided that a dividend (not necessarily 3 per cent.) has been paid in each of the ten years preceding the investment.

It will be noticed that the section also empowers a trustee to vary the investments at his discretion.

Section 2 of the Trustee Act 1893 deals with the purchase of redeemable stocks—

(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (g), (i), (k), (l), and (m), of section 1, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

Where trustees are empowered to invest money "at their discretion," it has been held that the discretion is

limited to making a choice from among the authorised trustee investments.

VII.—Certain classes of investments are barred to trustees unless the instrument of trust explicitly authorises them, *e. g.*—

(a) The lending of trust funds on the security of a personal promise, or on the security of personal property.

(b) Investment in the trustee's own business or in any trading concern, whether by way of loan, or share in a partnership, or shares in a company.

VIII.—The trustee is responsible for handing over trust property to the persons who are really entitled to receive it. But the court has power under Section 3 of the Judicial Trustees Act 1896 to excuse a reasonable and honest mistake. If the trustee is in doubt as to whom to pay trust money, he should apply to the court for directions.

IX.—The trustee is bound to give the beneficiary information regarding the trust property, if he asks for it; to keep accounts of the trust property; to permit the beneficiary to inspect all accounts, vouchers, etc.

X.—The trustee must not, except in purely ministerial matters requiring no exercise of discretion, delegate his powers to another, not even to a co-trustee, unless he is authorised to do so by the terms of the trust or by statute, or except in cases of necessity. Where there are two or more trustees they must, as a rule, act jointly in all trust business.

But by Section 1 of the Execution of Trusts (War Facilities) Act 1914, a trustee engaged on war service may, by a power of attorney, delegate his power to a suitable person for the period during which he is so engaged and for one month thereafter. The section applies not merely to naval and military men, but to those engaged abroad in the work of the British Red Cross Society, the St. John Ambulance Association, and similar bodies, and also to prisoners of war and interned persons. By section 3 the same privilege is extended to trustees who, being abroad, are, by reason of the war, prevented from returning.

XI.—The trustee must not make a private profit out of the trust property or otherwise use it for his own advantage, and he cannot, as a rule, demand payment for his time and trouble, unless the instrument of trust or the court sanctions it, or the beneficiary, without undue pressure, agrees. But he is entitled to be repaid out of the trust property all expenses properly incurred by him in connection with the affairs of the trust.

XII.—A trustee must not set up against the beneficiary a *jus tertii*, i. e. the claim of a third person. The case of *Newsome v. Flowers*, 30 Beav. 461 [1861], furnishes a good example of this rule. A chapel had been built in 1821 and vested in trustees for a religious body known as the Particular Baptists. In 1841 a split occurred amongst the members, and some of them went to another chapel. In 1860 there were living only three trustees of the chapel, and two of these were old and resided at a distance. The members of the seceding congregation induced these surviving trustees to appoint twelve new and additional trustees, who were, in fact, favourable to the interests of the seceding congregation. The new trustees at once took steps to obtain possession of the chapel, intending, of course, to devote it to the use of the seceding congregation.

It will thus be seen that the new trustees were acting in defiance of their duty to the beneficiaries (the old congregation), on the ground that the seceding congregation had rights in the trust property. They were setting up against the real beneficiaries a *jus tertii*. In justification of their conduct they alleged that the old congregation had departed from the worship prescribed by the trust deed.

If this was true the proper course for the trustees was to raise this question in legal proceedings taken for the purpose, and not to attempt to gain possession of the chapel by a side-wind.

It was held that the appointment of the new trustees must be set aside and others appointed.

THE LIABILITIES OF A TRUSTEE

The extent of the trustee's liability in the event of a breach of trust is as follows—

1. If he has been guilty of negligence only, he is liable to make good the actual loss to the beneficiaries. Where he has advanced money on a mortgage which would be good and proper security for a smaller amount, but is not good security for the amount actually advanced, he is only liable to make good the difference.

2. If he has used trust money for his own purposes, he must replace it and also account for all the profits made by him in the use of it, or, if the beneficiary desire it, pay interest at such a rate as the court thinks fair.

3. If there are two breaches of trust, one profitable to the beneficiary and the other not profitable, the trustee cannot balance the loss against the profit, he is liable for the whole of the loss on the unprofitable investment.

4. Where several trustees have been jointly responsible for a breach of trust any one of them may be made liable to make good the whole loss. But where the breach is not fraudulent, the trustee who has to pay will, as a rule, be able to compel the others to refund to him their due shares of the amount paid by him. But a trustee is not liable for a breach of trust by a co-trustee unless he has handed the trust property to him and has neglected to see that it was properly applied; or allows him to receive it without inquiring how he proposes to deal with it; or, knowing that he intends to commit, or has committed, a breach of trust, does not take the necessary steps to prevent it or secure restitution; or generally, is guilty of wilful default.

5. If a trustee converts the trust property into some other form, *e. g.* land into money, or money into land, or land into (say) railway shares, the property in its new form is still trust property. Any gain that has been made accrues to the beneficiaries, while the trustee must bear any losses.

6. Where the trust property appears to be in danger through the misconduct of the trustees, or by reason of their living abroad outside the jurisdiction of the court, any person interested in the property may obtain an injunction ordering the trustees to do their duty, or restraining them from interfering with the trust property, or an official of the court (a receiver) may be appointed to take charge of the property.

By Section 3 of the Judicial Trustees Act 1896 any trustee (whether appointed under that act or not) may be excused by the court for any breach of trust if he has acted honestly and reasonably, and ought fairly to be excused.

Where a claim is made against a trustee in respect of some breach of trust of long standing, the trustee can avail himself of any statute of limitations¹ which is applicable to the case, unless the breach of trust was fraudulent, or he still retains the trust property either in its original or in some converted form.

Where, as the result of a breach of trust, the trust property comes into the hands of a third party his position is that of a mere trustee, and the beneficiaries can follow the property into his hands and recover it. But if the third party has received the property in good faith, not knowing of the breach of trust, and has given valuable consideration for it, he cannot as a rule be made to give it up.

THE POWERS OF A TRUSTEE

The Powers of a Trustee are as follows—

1. He may, of course, exercise all the powers expressly conferred by the instrument of trust.

2. He may do such reasonable and proper acts as may be necessary for realising and protecting the property, but in doing so must act honestly in the interests of the beneficiaries as a body, and not favouring one at the

¹ See p. 14 above.

expense of another. This power involves the power to incur such expenditure as may be reasonably necessary for his purpose. But he must not do anything of a speculative nature however great possibilities of advantage it may offer. And he cannot sell, mortgage, exchange, or partition the trust property unless the instrument of trust, or some statute sanctions it.

3. With regard to debts due to the trust or claims made by it he may, as he thinks fit, and provided the instrument of trust does not expressly forbid it, allow any time for payment, or accept any composition or security, or may compromise, abandon, submit to arbitration, or otherwise settle them (Trustee Act 1893, Section 21).

THE RIGHTS OF A TRUSTEE

The Rights of a Trustee are as follows—

1. He is entitled to have refunded to him out of the trust property any expenses properly incurred by him; but if he has committed any breach of trust his expenses will not be paid to him until he has made it good. In certain cases, if the trust property is not sufficient to repay what is due to the trustee, the beneficiaries personally may have to make good the trustee's loss. Where the property of a member's club, trade union, or similar association is vested in trustees the members of the club, etc., are, of course, the beneficiaries. But the members are usually under no liability to any one beyond the amounts of their subscriptions. The trustees in such cases therefore accept office on the understanding that their right to be indemnified for their expenses extends only to the trust property; and the members are under no personal liability to make good the losses of the trustees, unless the rules of the association expressly provide that they shall.

2. When the purposes of a trust have been completely carried out the trustee is entitled to have his accounts examined and settled by the beneficiaries and to be discharged from his trusteeship.

3. A trustee may demand that the condition and accounts of the trust shall be investigated and audited by the Public Trustee. A beneficiary has the same right.

4. Trustees or beneficiaries may apply to the court to obtain its approval of any specific sale, purchase, compromise, or other transaction, or for directions and advice in certain cases of difficulty, such as a doubt as to the advisability of carrying out some instruction in the trust instrument, or as to the meaning of the instrument or some question arising in the administration of the estate. Where the difficulties cannot be disposed of in this way, or where the trustee has good reasons for desiring to be relieved of his trust, he may apply to have it administered by the court. Such an application may also be made by a beneficiary.

CRIMINAL PROCEEDINGS AGAINST A FRAUDULENT TRUSTEE

At common law the trustee, as being the legal owner of the trust property, was not regarded as having committed a criminal offence if he fraudulently applied it to his own use, or to some purpose not in accordance with the trust instrument. By the Larceny Acts of 1861 (Section 80) and 1901 (Section 1) trustees fraudulently disposing of trust property are guilty of misdemeanour and are liable, as a maximum punishment, to penal servitude for seven years.

The fact that a fraudulent trustee has been prosecuted and punished does not prevent the person defrauded from taking civil proceedings against him in order to recover the lost property or obtain compensation for its loss.

REMOVAL, ETC., OF TRUSTEES

The following are the principal rules relating to change of trustees consequent on death, retirement, or removal.

1. On the death of one or more trustees the surviving trustees (or trustee) continue to own the trust property

in the same manner as the original trustees did, and have the same powers of dealing with it, unless, of course, the instrument of trust provides otherwise.

In the event of all the trustees dying, the personal representative (*i. e.* the executor appointed by will or next of kin appointed by the court as administrator) of the last surviving trustee becomes, pending the appointment of new trustees, the owner of the trust property, subject, of course, to the terms of the trust. But he cannot be compelled to act as trustee, nor will he be allowed so to act if the creators of the trust have made other provision (see Conveyancing Act 1911, Section 8).

2. A trustee desiring to retire from the duties of the trust can do so—

(a) If and as the trust instrument authorises it.

(b) He may (under Section 11 of the Trustee Act 1893) declare by deed his desire to retire; and if his co-trustees and any other person empowered to appoint trustees give their consent by deed he becomes free.

(c) He may obtain the consent of all the beneficiaries.

(d) He may obtain the consent of the court.

3. A trustee may be removed without his consent—

(a) If and as the trust instrument authorises it.

(b) Under Section 10 of the Trustee Act 1893, a trustee who remains out of the United Kingdom for more than a year, or desires to be discharged, or refuses or is unfit to act in the matters of the trust, or is incapable of so acting, may, unless the trust instrument forbids it, be replaced by another trustee appointed in writing by the remaining trustees or certain other persons.

(c) Under Section 25 of the Trustee Act 1893, the court, whenever it is expedient, may remove a trustee and appoint another in his place. Thus, a convicted felon or a bankrupt may be removed, or a trustee who lives abroad or cannot be heard of; also a trustee who is in a state of constant hostility towards the co-trustees and beneficiaries. Application for the removal of a trustee may be made by a beneficiary (see Section 36, Trustee Act 1893).

4. A new trustee may be appointed—

(a) If and as the trust instrument sanctions it.

(b) In accordance with Section 10 of the Trustee Act 1893, see above, 3 (b).

(c) In case of insanity of a trustee the Lunacy Court may appoint a substitute.

(d) In accordance with Section 25 of the Trustee Act 1893, see above, 3 (c).

5. When there is any change of trustees it is necessary that the trust property should be re-vested in the body of trustees thus newly established. This may be done—

(a) In the ordinary way of transferring property.

(b) Under Section 12 of the Trustee Act 1893, it is provided that where new trustees are appointed or an existing trustee is discharged by deed, the trust property may be vested in the new body of trustees by a declaration contained in the deed itself and stating that that property is to be vested in them. Certain kinds of property are excepted from this rule, of which the most important are lands in mortgage, and stocks or shares transferable in the books of a company or other body.

(c) Application may be made to the court for a vesting order where neither of the methods (a) and (b) is suitable.

(d) Where the court appoints new trustees and in certain other cases it will make a vesting order, vesting land belonging to the trust in such trustees (see Section 26, Trustee Act 1893).

EXHAUSTION OF TRUST

When the purposes of a trust have been completely carried out, and there still remains a portion of the trust property, but no person in whose favour a constructive or implied trust can arise, the property is held in trust for the Crown. Thus in *Cunnack v. Edwards* [1896], 2 Ch. 679, a friendly society had been established to provide annuities for the widows of deceased members. On the death of the last widow annuitant there was in hand a

surplus of £1250 : Held, that this fund passed to the Crown.

Where a society is dissolved, and the rules make no provision for the distribution of funds at dissolution these will be distributed amongst the existing members. *In re Printers and Transferrers' Amalgamated Trades Protection Society* [1899], 2 Ch. 184.

JUDICIAL TRUSTEES

Under the Judicial Trustees Act 1896, Section 1, the creator of a trust, a trustee, or a beneficiary may apply to the court for the appointment of a person to act as trustee either by himself or with some other person, or in place of any existing trustee or trustees. If the court appoints such a trustee he is called a "judicial trustee." He may be an official of the court named by the judge (official judicial trustee), or, if the court thinks fit, he may be some person nominated by the applicant.

A judicial trustee is under the control and supervision of the court, but he may be remunerated out of the trust funds. He must keep proper accounts, which will be audited yearly by a person appointed by the court. The court has discretion to order an inquiry into his administration of the trust or into any particular dealing or transaction. A judicial trustee may retire from the trust with the sanction of the court.

THE PUBLIC TRUSTEE

The Public Trustee is an official created by the Public Trustee Act 1906. He may act either alone or jointly with any other person or persons as trustee, and generally has the same powers, duties, liabilities, rights and immunities as a private trustee (section 2 (2)). Any losses for which the public trustee is responsible and for which a private trustee would be liable are with certain exceptions to be made good out of the public funds (section 7). He

may decline to accept any trust or may impose conditions on acceptance, but he is not to decline on the ground only that the value of the trust property is small. He may not accept any trust which has been created exclusively for religious or charitable purposes, nor may he, except in accordance with Rule 7, Public Trustee Rules 1912, accept any trust which involves the management or carrying on of any business (section 2). The public trustee may be appointed by any will, settlement, or other instrument of trust, to be trustee, acting either alone or in conjunction with others. And he may be appointed in the cases mentioned on pp. 149-150, where, under Sections 10, 11 and 25 of the Trustee Act, a new trustee is appointed by the Court or by existing trustees and certain other persons. Where the appointment is made by will it is not necessary to inform the public trustee, but his consent must be obtained before the appointment can have effect (Section 5 and Public Trustee Rules 1912, Rules 8-10). As a rule the court will not appoint the public trustee contrary to the wishes of an existing trustee against whom nothing is alleged, nor against the wishes of any considerable body of beneficiaries.

Custodian Trustee.—By Section 4 of the Public Trustee Act 1906 and Rule 30 Public Trustee Rules 1912, the Public Trustee, and any incorporated Banking or Insurance or Guarantee or Trust Company, or other body corporate empowered to undertake trusts, may be appointed to act as “custodian trustee” of any trust. Where this is done the trust property is transferred to the custodian trustee as if he were sole trustee, but the management of the property and the exercise of the powers under the trust are vested in other trustees known as “managing trustees.”

The advantage of such an arrangement is that the capital may be placed in safe hands and made absolutely secure against loss, whilst the management of the active business of the trust may be entrusted to other and perhaps more expert hands.

Fees of the Public Trustee prescribed by the Public Trustee (Fees) Order 1912.—In acting as Ordinary Trustee the Public Trustee may charge a fee at the following rates—

1. Capital Fees. On accepting the trust, 15s. per cent. on the first £1000 of capital value; 5s. per cent. on the next £19,000; 2s. 6d. per cent. on the next £30,000; and 1s. 3d. per cent. on everything over £50,000. Thus the fees on accepting a trust of value £70,000 would be £105.

Upon withdrawal from the trust of any capital, the percentage payable is a flat rate equal to the average percentage payable on the entire capital on acceptance, *i. e.* in the above case 3s. per cent. But the total fees payable on acceptance and withdrawal are not to be less than £1.

2. Income Fees. Upon the annual income of the trust property 2 per cent. on the first £500 of income; 1 per cent. on the next £1,500; one-half per cent. on any excess of income over £2000. Thus, the income fees where the income is £4000 a year would be £35 per annum.

If the income is paid direct to the beneficiary or to his bank, or is collected by him, the rate is 1 per cent. on the first £2000 of income and one-half per cent. on any excess of income over £2000. Thus, on an income of £4000 the fees in these circumstances would be £30 per annum.

3. Investment Fees. Upon any purchase of land or any mortgage or charge on property a fee of 2s. 6d. per cent. on the amount invested. Upon any other investment, a fee of 10s. per cent., such fee including brokerage. Depositing money in a bank or with the Post Office, or purchasing an annuity is not deemed to be making an investment.

For further particulars see the Order.

TRADE UNION TRUSTEES

The rules of a trade union constitute its instrument of trust. By Section 14 and Schedule I of the Trade Union Act 1871 the rules of a registered trade union must provide amongst other things for the following matters—

1. The whole of the objects for which the trade union is established.
2. The purposes for which the funds are to be applicable.
3. The conditions under which any member may become entitled to benefit.
4. The appointment and removal of a trustee, or trustees, and a treasurer.
5. The investment of funds.
6. An annual or periodical audit of accounts.
7. The inspection of the books and names of members of the union by every person who has an interest in its funds.

The trustees of a trade union need not be members (Lord Davey in *Yorkshire Miners' Association v. Howden* [1905], A.C. 256).

Under the Mortmain and Charitable Uses Act 1888, Section 4, a conveyance of land to trustees for charitable purposes is void unless certain conditions prescribed by the Act are complied with. The term charitable purposes is sufficiently wide to include many of the purposes of a trade union, and it is therefore probable that trade unions come within the provisions of the Act. Section 7 of the Trade Union Act 1871, however, enables the trustees of registered trade unions and of branches to purchase or take on lease any land not exceeding one acre. The section does not directly specify the purposes for which the land is to be used, but it is headed "Buildings for trade unions may be purchased or leased." It would therefore appear that the land acquired by trade unions and their branches can only be used as sites for buildings to be devoted to trade union purposes.

The section gives the trustees power to sell, mortgage, let, or exchange the land and the buildings on it.

Section 8 of the Trade Union Act 1871 and Sections 3 and 4 of the Trade Union Act 1876 contain the following provisions regarding the ownership of the property of a trade union—

1. All real and personal property of a trade union is to

be vested in the trustees of the union for the use and benefit of the unions and its members.

2. All real and personal property of a branch of a trade union is to be vested in the trustees of the branch, but if the rules of the trade union so provide it may be vested in the trustees of the trade union. Even when the branch property is vested in the branch trustees the trade union as a whole may, under the rules, have a sufficient interest in the property of the branch to enable it to prevent the branch trustees from misapplying the funds. Thus, in *Cope v. Crosingham* [1909], 2 Ch. 148, the members of a trade union branch threatened to secede and distribute their funds. Under the rules of the society the executive committee were, in the event of a deficiency in the funds of the central society, empowered to make a levy to a very large percentage on the funds of the branches. Each branch was also bound to contribute to the head office fund 6s. a year in respect of each financial member, and must also pay to the head office any surplus of sick pay over a certain amount. The funds of each branch were vested in its own trustees. The trustees of the union brought an action against the trustees of the branch and obtained an injunction restraining them from carrying out the proposed distribution, or from dealing with the funds in any way not authorised by the rules. But the court would not order the branch trustees to pay over the moneys due to the head office, as this would be directly enforcing one of the agreements mentioned in Section 4 of the Trade Union Act 1871. As a way out of the deadlock it was suggested that if new trustees could be appointed for the branch, the old trustees might be ordered to transfer the branch funds to them.

3. All property is to be under the control of the trustees, and (on their death) under the control of their respective executors or administrators until successors are appointed.

4. On the death or removal of a trustee the property (with certain exceptions mentioned below under the fifth

head) is to vest automatically in the succeeding trustees, no formal transfer being necessary.

5. But where the property consists of stocks and securities in the public funds of Great Britain and Ireland, it must be formally transferred into the names of the new trustees.

6. Where a trustee of a trade union or branch—

- (a) is absent from the United Kingdom;
- (b) becomes a bankrupt, etc.;
- (c) becomes a lunatic;
- (d) is dead; or it is not known whether he is alive or dead;
- (e) has been removed from his office of trustee;

and stock belonging to the union or branch is transferable at the Banks of England or Ireland, and is standing in his name, the Registrar of Friendly Societies, on a written application signed by the secretary and three members, may order it to be transferred into the names of other persons as trustees. The Registrar's order will, in the first place, be addressed to the surviving trustees, but if there be none surviving, or if they refuse or are unable to make the transfer, then he may direct the Bank to make it. (For the necessary forms of application and order for transfer, see the Registrar's Regulations of December 31, 1903, Rules 17-20 and Forms P, Q and R.)

Where it is necessary in the interests of a trade union to institute legal proceedings (either in a civil or in a criminal court) in any matter affecting the property of the union, the proceedings may be taken either in the names of the trustees or of some officer authorised by the rules. In like manner such trustees or officer may defend any action instituted in any matter affecting the property of the union (T.U.A., 1871, Section 9). Under this section a servant of a trade union may sue the trustees for his salary (*Curle v. Lester*, 9 T.L.R. 480). Where there is a dispute between the executive council of a trade union and one of its branches, and the latter refuses to deliver up the

branch property (though under the rules the executive council is entitled to demand it), the trustees of the union may sue the branch trustees under the section (*Madden v. Rhodes* [1906], 1 K.B. 534). According to Lord Atkinson, in *Vacher v. London Society of Compositors*, 107 L.T. 727 [1913], an action of tort brought against the trustees of a trade union touches or concerns the property of the union, and the trustees may, therefore, be sued and the funds made liable for any tort committed by the union, provided it is not committed in contemplation or furtherance of a trade dispute (see p. 85 above). The law on this point is, however, by no means clear.

The liability of a trustee of a registered trade union for the safe keeping of the trust property is lighter than that of an ordinary trustee. An ordinary trustee must exercise the same diligence and care in transacting trust business that a man of average prudence and foresight would exercise in his own affairs. If through his negligence there is any loss of trust funds he must make it good.¹ A trustee of a registered union is, however, not liable to make good any deficiency which may arise or happen in the union funds, but is only liable for the moneys which he has actually received on account of the trade union (T.U.A., 1871, Section 10). The meaning of this provision seems to be that if he is called upon to account for any money which he has received, it is sufficient for him either to produce the money or to show that it has been invested. He incurs no liability through failing to invest it or through making an unwise and unprofitable investment, nor is he liable for the acts and defaults of his co-trustees.

His freedom of choice of investments is limited in the same way as that of an ordinary trustee. (See pp. 138-143 above). Thus, trade union trustees investing the funds under their control in securities not authorised by the rules of the society, nor by Section 1 of the Trustee Act 1893,

¹ Unless excused under Section 3, Judicial Trustees Act 1896. (See p. 146.)

commit a breach of trust and will be ordered by the court to refund to the society the money so invested and to refrain from further investments of the same kind. In *Bennett v. National Amalgamated Society of Operative House and Shop Painters*, 31 T.L.R. 203 [1915], the general council of a trade union sanctioned by resolution the purchase of 100 shares in "Labour Newspapers (Limited)," a company whose object was to establish and publish newspapers and other publications in the interest of, and to promote the policy of the political party known as, the Labour Party. The *Daily Citizen* was owned by this company. The trustees contended that the purchase of the shares was authorised by a rule which stated that the objects of the society were, amongst other things, "the regulation of the relations between workmen in the trade and the aiding of other societies having for their objects the promotion of the interests of workmen." It was held that the purchase of the shares could be justified neither as a means of carrying out the objects of the society as laid down in the rules, nor as an investment of trust funds. Mr. Justice Warrington said that the application of the funds was never intended to be an investment and was quite beyond a mere investment. It was an application of the funds for a particular purpose. Even if the rules provided for the investment of the society's funds in trading concerns, this application of them could not be justified.

The effect of this decision is, that where a trade union wishes to assist financially in the publishing of a newspaper it must have a rule authorising the making of monetary contributions to the newspaper. And further, if the newspaper is political in tone, the making of contributions must be sanctioned in the manner prescribed by Section 3 of the Trade Union Act 1913, relating to political objects.

(The misapplication of trade union funds otherwise than by unauthorised investment is dealt with on pp. 58-61.)

In the case of a registered trade union the treasurer or

other officer at certain fixed times (or whenever he may be called upon) must render an account of—

(a) all money received and paid by him since he last rendered account;

(b) the balance remaining in his hands at the last account;

(c) all bonds or securities of the trade union.

It is the duty of the trustees to have this account audited by a fit and proper person, and it is the duty of the treasurer, if requested to do so, to hand over to the trustees the balance which, on the audit, appears due, as well as all books, papers, securities and other property of the union. If he fail to hand these over as required the trustees may sue him for them (T.U.A. 1871, Section 11).

Previous to the passing of the Trade Union Act 1871, it was held that inasmuch as a trade union was an illegal society the courts could not protect its property against the dishonesty of its officials or other persons. In *Hornby v. Close*, 15 L.T. 563 [1867], and *Farrer v. Close*, 20 L.T. 802 [1869], trade unions prosecuting officers who had withheld or misappropriated union funds were unable to secure convictions.

The dissatisfaction caused by these miscarriages of justice was a considerable factor in bringing about the passing of the Trade Union Act 1871, and Section 12 of that Act placed trade union property under the protection of the law. This section enacts that where any person whatsoever wrongfully obtains possession of trade union property, or, being in possession of it, wrongfully withholds it or misapplies it, a court of summary jurisdiction may order him to make full restitution to the trade union. The court may also, if it think fit, order him to pay a penalty not exceeding £20, and costs up to £1. Should he fail to make restitution or to pay the penalty and costs he may be sent to prison for three months.

It should be noticed that the proceedings under section 12 are criminal proceedings, and should therefore not be

resorted to where there is a genuine dispute as to who is entitled to have possession of trade union property, the honesty of the person in possession not being in question. Such a dispute should be disposed of by civil proceedings under section 9.

Where a person has been sent to prison under section 12 the punishment thus suffered operates to extinguish further liability, and the man cannot be sued in a civil court for the recovery of the money as though it were a debt (*Knight v. Whitmore*, 53 L.T. 233). But a dishonest official may now be prosecuted under the Larceny Act 1861 as amended by the Larceny Act 1901, or under the Larceny Act 1868, and criminal proceedings under those acts do not bar the civil remedy. Thus, where there seems to be a possibility of recovering the misappropriated property, it may be advisable to proceed under the Larceny Act rather than under Section 12 of the Trade Union Act 1871. The latter Act is, of course, advantageous when a speedy settlement of the affair is the main thing to be considered.

(For cases of fraudulent misapplication of trade union property dealt with under the various statutes see *The Law Relating to Trade Unions*, pp. 177-187.)

CHAPTER V

SECURITIES AND INVESTMENTS

Mortgages.—A mortgage is a transfer of the ownership in something made in order to secure the payment of a debt. Not only land and buildings may be mortgaged but also goods and chattels, and even such intangible forms of property as stocks and shares. Mortgages of goods and chattels are effected by means of Bills of Sale.

Mortgage of Real Property.—The following are the principal features of a mortgage of real property—

1. A, the owner of land, wishes to borrow money from B on the security of the land.

2. B lends the money, and in consideration of the loan A conveys the land to B, *i. e.* he executes a deed transferring the ownership of the land to B. This deed of conveyance is the mortgage. A, the borrower, is the mortgagor; B, the lender, is the mortgagee.

3. The deed contains a clause, binding B to convey the property back if the loan, with interest, is repaid at a certain date, usually six months from the date of the deed. This right of A to have his property conveyed back to him is called the Right of Redemption, *i. e.* the right to buy back.

4. The mortgagor, A, remains in possession of the land, as a kind of tenant on sufferance, and manages it and draws the rents and profits just as though he were still owner.

5. If he fails to repay the sum borrowed with interest on the day named his right of redemption is, in strict legal theory, gone; and the property is B's absolutely, and he may enter into possession. But if he does so he cannot,

without certain formalities, deal with the property as his own, and he will have to give a strict account of all rents and profits, and of his management of the property. He is, in fact, regarded as a trustee of the land for A. An unpaid mortgagee therefore rarely takes this step.

6. In actual practice money lent on mortgage is usually lent for an indefinite period, the lender only requiring regular payment of the interest. Nevertheless, six months is the time generally mentioned in the deed for repayment.

7. If the loan is called in (either at the end of the six months, or later) and A cannot pay, B may take steps to have his theoretical legal ownership made into actual ownership and to finally exclude A from his right to redeem the property. This is called *Foreclosure*. To effect this B must bring an action against A. The court, after hearing the case, fixes a day for payment of what is due, and if the money is not paid on that day an order for foreclosure is made.

Note—That if B has taken possession, as described under head (5), he must take foreclosure proceedings if he wishes to become the full and actual owner of the property.

8. The mortgagee, B, has another right (unless the mortgage deed expressly forbids it), viz. to sell the property if the money is not paid when due. But any surplus left after paying the debt with interest and the expenses of the sale must be handed over to A.

The sale cannot take place unless A, after having had notice to repay the mortgage money, has allowed three months to pass without doing so; or unless the interest is at least two months in arrears; or unless A has infringed some other provision of the mortgage deed.

9. A may give several mortgages on the same property, and if the property is afterwards sold to repay the loans, the various mortgagees are, as a rule, entitled to payment in the order in which their mortgages were made.

10. If B, the mortgagee, enters into possession of the land, as described in (5), he becomes the full and actual

owner after twelve years,¹ unless he has, in the meantime, acknowledged in writing A's right to redeem.

Mortgage of Goods, Chattels, etc.—A mortgage of goods is made by means of a bill of sale. The goods and chattels which may be mortgaged by a bill of sale include such things as furniture, pictures, plate, horses, carriages, cattle, crops, etc., etc., but not stocks and shares and similar property of an intangible kind. The following are the main features of a bill of sale—

1. } Exactly as in the case of a mortgage of real pro-
2. } perty. (See p. 161 above.)
3. }

4. Although B, the mortgagee, is now the strict legal owner of the goods, the original owner A retains the possession of them.

5. A has a right to redeem the goods on repayment of the loan within the time specified in the deed. If he does not pay within this time, B is entitled to take possession of the goods and sell them.

6. Even after seizure of the goods A has five days within which to redeem the goods by payment of the amount due, together with any expenses incurred by B.

7. On the sale of the goods any surplus left after paying the debt with interest and the expenses of the sale must be handed over to A.

All mortgages of goods and chattels (with the single exception of ships) must now be made in accordance with the Bills of Sale Acts 1878 and 1882. A study of the main provisions of these Acts will show in what other respects a mortgage of goods differs from a mortgage of land.

All bills of sale must be attested by at least one witness, who must be a solicitor if the bill is an absolute bill of sale. They must also be registered within seven days, and registration renewed every five years. A conditional bill of sale must be in accordance with the form given in the Schedule of the Bills of Sale Act 1882, and the consideration must not be less than £30.

¹ The time required by the Statute of Limitations. (See p. 14 above.)

Equitable Mortgage.—An owner of property may mortgage his property without executing a mortgage deed. He does this by handing over to the lender the documents of title of his property, *e. g.* the title-deeds of house or land, share warrants, bonds, etc.¹ The consignee of goods sent by sea may mortgage the goods by handing the bills of lading to the lender. Such a mortgage is called an Equitable Mortgage. And where a borrower, who has already mortgaged his property, makes a second mortgage of it—*i. e.* mortgages the equity of redemption—this is an equitable mortgage.

Mortgages during the War.—Where, by reason of circumstances attributable directly or indirectly to the War, a mortgagor is unable to pay any principal or interest which has become due, the mortgagee cannot foreclose or sell the property without leave of the court. The provision only applies to mortgages made before August 4, 1914, and it does not cover the case of a mortgagee in possession of personal property (*e. g.* the holder of a bill of sale), nor the case of a mortgagee of real property who had already taken possession before August 31, 1914.

The Act gives judges an absolute discretion to postpone a sale or foreclosure of mortgaged property.

(See Courts (Emergency Powers) Act 1914 and the Rules of Court made thereunder.)

LIMITED LIABILITY COMPANIES

A Public Limited Liability Company is an association of seven or more persons associated for common objects. In order to form such a company, a Memorandum of Association must be drawn up, stating: (*a*) the name of the company with the word "Limited" following it; (*b*) its objects; (*c*) the amount of its capital; (*d*) that the liability is limited; (*e*) the situation of the registered office. To this memorandum seven or more members subscribe their

¹ The deposit of title-deeds or securities at a bank to cover an over-draft is an equitable mortgage.

names, and it is submitted to the Registrar of Joint Stock Companies, who grants a certificate of registration, the effect of which is to make the association a company with limited liability.

Two members are sufficient to form a Private Company.

Articles of Association may also be drawn up and registered, though this is not necessary, unless the liability is limited by guarantee. These are more detailed than the memorandum, and consist of regulations for conducting the affairs of the company.

On an issue of shares by a company it is usual to provide that they shall be paid for by instalments: thus, so much on application, so much on allotment, and so much at specified intervals, if and when the company makes a call for it.

A shareholder who fails to pay the amount of any call duly made may be sued for it, or his shares may be forfeited. Moreover, the articles of association may provide that a shareholder who has forfeited his shares for non-payment of a call shall still be liable to pay the amount of the call, and such a provision is binding.

The holder of shares in a limited company is liable for the debts, etc., of the company only to the extent of the face value of his shares. If his shares are fully paid up he may, if the company fail, lose the money he has actually given for them, but no more. If the shares are not fully paid up, his liability is limited to the extent of the unpaid portion of each share. Thus, a person who holds one hundred £5 shares, of which £2 per share has been paid up, may be called upon to contribute £300 to meet the liabilities of the company. In some companies each member who joins guarantees the payment of a certain sum towards the company's liabilities. In such cases the liability is said to be limited by guarantee.

Transfer of Shares.—Every limited company is required to keep a register of shareholders, and whenever a transfer of shares is made from one person to another the change of ownership is registered. The actual transfer must

be effected by a written instrument, signed by both the transferor and the transferee, and properly stamped. The following is an example of a deed of transfer for shares—

[Stamp.]

I, John Smith, of Chancery Street, London, in consideration of the sum of £40 paid by William Jones, of George Street, Bradford: Do hereby bargain, sell, assign, and transfer to the said William Jones One hundred shares of One Pound each, fifteen shillings paid, numbered 7194 to 7293 both inclusive, of and in the undertaking called Dash Limited: And I, William Jones, the said transferee, do hereby agree to accept and take the said shares, subject to the conditions aforesaid.

[Signatures of transferor, transferee, and witnesses follow.]

Share Certificate.—Every shareholder is entitled to a share certificate, stating the number and value of the shares, with their identification numbers, of which he is registered owner, and the amount paid up on each share.

Share Warrant.—When shares have been fully paid up certificates may be issued to holders after this form: Blackacre Gas Company, Limited—Share Warrant. This is to certify that the bearer of this warrant is entitled to 75 fully paid shares of £5 each in the above-mentioned company, etc., etc.

When a share warrant is thus issued to a shareholder his name is struck off the register; for any bearer of the warrant is deemed to be the owner of the shares, and can demand payment of dividends. The payment of dividends is facilitated by the use of coupons. A series of these are attached to the warrant and are dated with the dates on which dividends become payable for several years. As each date comes the bearer tears off the appropriate coupon, and on presenting it is paid the amount of dividend due. A purchaser of share warrants should satisfy himself that future coupons have not been detached.

The great advantage of a share warrant is that the holder can sell his shares without the trouble and expense of a formal transfer. The mere delivery of the warrant to the purchaser is all that is necessary. A serious disadvantage attaching to their possession is the possibility of theft, loss, or destruction.

It should be observed that the transfer of a share certificate is not in itself sufficient to pass the ownership of the shares mentioned therein. And its loss, or theft, or destruction is not a vital matter, for the holder's name appears on the company's register.

Preference Shares.—These are special shares which are offered on the terms that the holders shall be entitled to receive a certain fixed dividend before anything is paid to the ordinary shareholders. The payment of such dividends may be made contingent on there being a profit each year or half year, in which case they are known as Contingent Preference Shares or simply Preference Shares.

If the preferential dividend is not contingent on there being a profit each year or half year, then if, in any year or a succession of years, no profits are made, the arrears of preference dividends will accumulate, and if ever a profit is made, these arrears must be paid before the ordinary shareholders receive a dividend. Shares held on such a condition are said to be Non-Contingent or Cumulative Preference Shares.

In some cases preference shares give a further right to participate in surplus profits after the ordinary shareholders have received a certain dividend.

It may be made a condition of taking preference shares that, in the event of the company being wound up, the preference shareholders shall have a preference as regards the right to be paid back such capital as there is left after all debts, etc., have been discharged.

Deferred Shares.—These are shares which enable their holders to draw large profits from small investments. They are issued on the terms that when a certain percentage has been paid on all the other shares of the company,

they shall receive a certain and usually a very high percentage of the surplus profits. Such shares are also called Founders' Shares, because they are usually offered to the promoters of a company as a reward for their services.

Difference between Shares and Stock.—The number of shares that a company can issue is limited by its memorandum of association, and each share is of a specified value and indivisible. A company may, however, in certain cases, convert its capital into a lump sum (as it were) representing the original amount, but capable of being sold in small quantities to meet the convenience of the purchasers. Thus, if a company with a capital of £50,000, consisting of 500 shares of £100 each, converts its capital into stock, the capital will consist of £50,000 of stock; and investors, instead of being compelled to invest in even hundreds of pounds, can purchase any quantity of stock, *e. g.* £328 of stock, £87 of stock, £3 of stock, £2 10s. of stock. Many companies refuse, however, to recognise fractions of pounds.

Governments and local authorities raise many of their loans by issuing stock.

Liabilities of Shareholders.—When a limited company is unable to pay its debts it is wound up, either voluntarily or by order of the court. The winding up of a company is analogous to the bankruptcy of an individual. The shareholders of a company which is being wound up are not directly liable to the creditors of the company—the company merely has a call on each shareholder for the amount of his shares not paid up. In the case of a company limited by guarantee, a call may be made on each shareholder for the amount guaranteed by him in the memorandum of association.

Even when a person has ceased to be a member of a company by parting with his shares, he may, if the company is wound up within one year of his doing so, be made liable as though he still held the shares. This rule of law is designed to prevent shareholders from escaping liability by transferring their shares to “men of straw” in

anticipation of a winding up. But a past shareholder is not liable for any debts or obligations contracted after he ceased to be a shareholder, nor if existing members are able to satisfy the contributions required of them (Section 123 Companies (Consolidation) Act 1908).

Floating Charge.—A floating charge¹ is a species of mortgage by which a company borrows money by mortgaging its property, both present and future, on the terms that, until the security is realised, the company is free to deal with the property in the ordinary way of business. Individual portions of the property may then be disposed of by the company in the course of its business, but others will be acquired, and these will be subject to the charge.

Debenture.—Where a company is in need of money it may, instead of issuing new shares and admitting, as it were, new partners into the undertaking, borrow money from the investing public at a fixed rate of interest. This it may do by issuing to each lender one or more debentures, each for a fixed sum of, say, £20, or £100, or £1000. The debentures may take the form of an instrument (either under seal or under hand only) by which the company charges its property to secure payment of the sum borrowed and interest. The date fixed for redemption, *i. e.* repayment of principal, is usually five, ten, or twenty years hence, but a debenture may be payable on demand, or it may be perpetual, *i. e.* unredeemable.

The following example will serve to illustrate the nature of a debenture—

Smith's Boot Company (Limited)

Registered Office: 1796 Queen St., London

Debenture

No. 86

£100

Smith's Boot Company, Limited, will, on the 1st day of January 1920, pay to [John Brown of Leeds or other

¹ The word "charge" is often used as synonymous with mortgage. Where property becomes the security for the discharge of a debt, or other obligation, it is said to be charged, or to have a charge on it.

the registered holder]¹ hereof for the time being the sum of £100. The Company will, in the meantime, pay to such registered holder interest thereon at the rate of five per cent. per annum.

The Company hereby charges with such payments its undertaking and all its property whatsoever and where-soever, both present and future, including its uncalled capital for the time being.

Given under the Common Seal of the Company this 20th day of January 1915.

Where debentures are made payable to the registered holder, as above, any transfer of ownership must be carried out in the way prescribed by the company. Thus a written transfer may be required as in the case of shares. (See p. 165.) In the case of debentures payable to bearer, transfer is effected by the simple process of handing the document to the transferee, or, as it is termed, by delivery. Debentures payable to bearer have attached to them a number of dated coupons for payment of interest, as in the case of share warrants. (See p. 166.)

A debenture-holder's position is not the same as that of a shareholder. He is entitled to his interest whether the shareholders receive any dividend or not, but he is not entitled to more than the agreed rate of interest if the company should make large profits. In the event of the company's being wound up the debenture-holder is not liable for its debts. On the contrary, he is a creditor, and is entitled to demand the sale of the company's property, and to be paid in full out of the proceeds before the ordinary unsecured creditors can receive anything.

Debenture Stock.—This bears the same relation to debentures that ordinary stock bears to shares. The borrowed capital, instead of being regarded as consisting of a certain number of small loans—each of a defined amount, such as £10, £20, £100, etc.—is looked upon as a lump sum. Each

¹ In a debenture payable to bearer, the word "bearer" is inserted here instead of the holder's name.

lender, instead of receiving several bonds or other instruments each entitling him to a certain small amount, receives a single certificate for the whole sum invested by him. A purchaser of debenture stock is not bound to take an even number of tens or twenties or hundreds, etc., of pounds, as in the case of debentures. He may buy any amount and, unless the articles expressly forbid it, even fractions of a pound.

Government and Municipal Stocks.—The stock issued by the British Government, by foreign and colonial governments, and by local and other public authorities, resembles the debenture stock of companies rather than their ordinary stock, being not a share in capital with a right to a share in such profits as may be made, but a right to an annuity of a fixed amount.

The holder of such stock may have his name inscribed as the owner thereof in the books of some bank acting as agent for the Government or public authority, and the transfer of such inscribed stock is effected merely by signed entries in the books.

By registering stock in a separate register, called the Transfer by Deed Register, it may be made transferable by deed only. In such a case the holder of the stock receives a register certificate as *prima facie* evidence of his title. In order to transfer any such stock a deed of transfer must be executed and delivered, along with the register certificate, to the bank. The fact of the transfer is then entered in the register, and a new certificate is issued to the transferee.

A holder of stock may also obtain a stock certificate stating that he or the bearer (as the case may be) is entitled to a specified amount of stock. Where a stock certificate is made out to bearer, the stock may be transferred by simple delivery of the certificate to the purchaser.

Bonds.—Governments, public authorities and companies may also borrow money by the issue of bonds. These must not be confused with common law bonds, which are instruments by which the performance of

obligations is secured under monetary penalties of specified amounts. A bond, as a form of investment security, is a formal promise to pay to a person named, or to bearer, at a specified future date, the sum lent, and, in the meantime, to pay, at named intervals of time, interest at a specified rate. Bonds to bearer, like share warrants and debentures to bearer, have interest coupons attached to them, and are transferable by simple delivery.

Scrip.—Where an issue of shares or of stock takes place, each successful applicant receives, as a kind of preliminary acknowledgment of his rights, a certificate stating that he is entitled to the amount of shares or stock mentioned therein. This is known as a Scrip Certificate, or as Scrip. Subsequently it is exchanged for shares or stock. As some length of time must usually elapse between the issue of the scrip and the issue of the shares or stock, a considerable amount of business is done in the sale and purchase of scrip. To facilitate transfers scrip may be made out to bearer. When this is done a change of ownership may be effected by mere delivery.

CHAPTER VI

NATIONAL HEALTH INSURANCE

What Persons are Insurable under the Act.—Insured persons must be over sixteen years of age ¹ and must belong to one of two classes. They must be either Employed Contributors or Voluntary Contributors.

Employed Contributors.—To be an employed contributor a person must be employed within the meaning of the Act, *i. e.* he must be either—

(a) Employed in the United Kingdom under a contract of service or apprenticeship. As to what constitutes a contract of service see Memo $\frac{101}{X}$ issued by the Commissioners.

It has been held that Nonconformist ministers, curates of the Church of England, physicians and surgeons of hospitals (whether resident or non-resident), are not engaged under contracts of service, but that pupil teachers and monitors are.

(b) Employed under a contract of service or apprenticeship as master or member of the crew of a British ship.

(c) Employed as an outworker.

A person who works out of a factory or workshop is not necessarily an outworker. An outworker is defined in the schedule as a person to whom articles or materials are given out to be made up, cleaned, washed, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person employing him. The articles, etc., must

¹ An upper age limit is not imposed in definite terms, but all contributions cease at seventy, as do also sickness and disablement benefit.

also be given out for the purposes of the employer's trade or business.

(d) Employed in the United Kingdom in plying for hire with a vehicle or vessel which he holds under a contract of bailment, in consideration of paying either a fixed sum, or a share of the earnings, or otherwise.

Bailment may be thus explained: Where A, the owner of a thing, without parting with the ownership, allows B to have possession of it, there is said to be a bailment. A is the bailor, and B the bailee. Thus, when a railway passenger deposits his bag in the left luggage office at a railway station there is a bailment. The usual arrangement between a cab proprietor and a driver is a contract of bailment.

(e) Employment under any local or other public authority except such as may be excluded by a special order. (Section 1 (1), (2) and Schedule I, Part I, N.I.A., 1911, and Section 6, N.I.A., 1913.)

See also Employment under Local and Public Authorities Orders; Employment under Local and Public Authorities Exclusion Order; and Memo $\frac{179}{X}$. As to persons who

go out of insurance on ceasing to be employed within the meaning of the Act, see Circulars A.S. 118, A.S. 150.

Exceptions.—Schedule I, Part II, N.I.A., 1911, specifies twelve different classes of workers who come within one or other of the above five groups, but who are not to be regarded as employed contributors. These are known as the exceptions to the Act. They are as follows—

(a) Persons employed in the naval or military service of the Crown, these being specially provided for in Section 46.

(b) Persons employed *under certain conditions* under the Crown or any local or other public authority.

Servants of the Crown who do not come under the special provisions of paragraphs (a) and (b), and Section 46, are in the same position as persons employed by private employers.

(c) Persons employed *under certain conditions* as clerks

or salaried officials of railway companies and other statutory companies.

The exceptions (b) and (c) do not take effect unless and until the Insurance Commission has granted Certificates of Exception.

(d) Elementary school teachers in certain cases.

Elementary school teachers who, on being certificated, become entitled to benefits under a superannuation scheme cannot be employed contributors, though they may be voluntary contributors. But those teachers who, being certificated, have not accepted the superannuation scheme, or being uncertificated, are not entitled to accept it, are employed within the meaning of the Act and must be insured. When a teacher on becoming certificated ceases to be an employed contributor, and does not become a voluntary contributor, the value of his contributions is transferred to the Teachers' Deferred Annuity Fund for his benefit (see Section 52, N.I.A., 1911 and Value of Contributions, Teachers' Regulations.)

(e) Persons employed in certain cases as agents paid by commission or fees or share in profits.

(f) Persons employed on farms and receiving no monetary payment; persons employed by their parents and receiving no monetary payment; persons maintained by their employers and receiving no monetary payment. (It may be mentioned here that any apprentice who receives no monetary payment is excluded from the Act by the last thirteen words of paragraph (a) of Part I, Schedule I.) As to what constitutes maintenance and money payment, see Form X 72.

(g) Non-manual workers whose rate of remuneration exceeds £160 a year.

Where a person is engaged partly in manual and partly in non-manual labour and his rate of remuneration is over £160 a year, he is outside the Act unless the manual work is substantially the real work for which he was engaged. Thus, a tailor's cutter and a dairyman's foreman have been held to be excepted. (For meaning of "Manual Labour"

and method of calculating Rate of Remuneration, see Form X 65 and Memo $\frac{114}{X}$.)

(h) Casual workers. These only come within the Act if they are employed for the purposes of the employer's trade or business, or are engaged or paid through a club and employed for the purposes of any game or recreation.

Casual work means work that is not regular, periodical, and permanent. Thus, a charwoman who, under a standing agreement, comes to a house one day per week, would not be a casual worker.

(i) Persons whose employment has, by special order, been declared to be of such a nature that it is ordinarily adopted as a Subsidiary Employment and not as the principal means of livelihood. For employments which have thus been scheduled, see various Subsidiary Employments Orders.

(j) Female outworkers who are the wives of insured persons, and are not wholly or mainly dependent on their earnings as outworkers.

This class has now been brought within the Act in England and Wales and Scotland by a special order made under Section 1 (2), Proviso, N.I.A., 1911 (see Married Women Outworkers Order).

(k) Fishermen remunerated by shares in profits or gross earnings in accordance with a custom or practice of any port. This exception does not take effect unless and until a special order has been made by the Insurance Commissioners (see Share Fishermen Provisional Order).

(l) Women employed by their husbands and men employed by their wives.

Any excepted employment may be brought under the Act by special order of the Insurance Commissioners (Section 1 (2), Proviso, N.I.A., 1911).

(As to exemptions of inmates of certain charitable and reformatory institutions, see p. 230 below.)

Certain classes of employed persons have become temporarily engaged in non-insurable civilian employments in

connection with the war: *e. g.* nurses, orderlies, civilians detained abroad, mechanics, etc., temporarily employed abroad, certain constables enrolled for special service. (As to the position of these see Circulars A.S. 118 and 172.)

Voluntary Contributors.—These are the persons referred to in Section 1 (1) of the Act of 1911 as persons “who possess the qualifications hereinafter mentioned.” These qualifications are that they are either—

(a) Engaged in some regular occupation upon which they are wholly or mainly dependent for their livelihood; or—

(b) have been insured persons for a period of five years or more; or, being of the age of sixty or upwards . . . have ceased to be insurable as employed contributors.

No person with an income exceeding £160 a year may become a voluntary contributor unless he has been insured under the Act for five years (Section 1 (3), N.I.A., 1911, Section 4, N.I.A., 1913).

It may be mentioned that persons falling within any of the classes of exceptions of Schedule I, Part II, may become voluntary contributors.

Married women cannot become voluntary contributors except as provided by Section 44, N.I.A., 1911 (see Section 44 (7)).

Exemptions.—The following persons may be exempted from insurance—

(a) Any person receiving a pension or income of £26 a year not dependent on his personal exertions.

(b) Any person ordinarily and mainly dependent for his livelihood upon some other person.

(c) Any person ordinarily and mainly dependent for his livelihood on his earnings in some other occupation which does not come under Schedule I, Part I (see Section 2, N.I.A., 1911, and Section 5, N.I.A., 1913).

The Insurance Commissioners grant certificates of exemption to these persons individually, on application. No one is entitled to exemption until he has obtained a certificate. In the case of exceptions individual certificates

are not required; though for the classes (b) and (c) the department, or public authority, or company employing these persons must obtain a certificate of exception; while the special orders necessary for classes (i) and (k) apply to the classes as a whole.

Any person employing an exempted person must pay the part of the weekly contribution ordinarily paid by an employer, just as though the employee were not exempted (Section 4 (4), N.I.A., 1911). A certificate of exemption must be renewed yearly. The exempted person also receives an Exemption Book, which must be produced to the employer, who enters in it weekly the amount of the employer's contribution paid by him. This contribution is paid by affixing stamps on an Exemption Card to be obtained by the employer from the Post Office. Unless and until the employee produces his exemption book it is the employer's duty to regard him as an insured person (see Collection of Contributions (Exempt Persons) Regulations).

The contributions paid by employers in respect of exempted persons form a fund which is applied by the Commissioners in providing medical and sanatorium benefit for the exempted persons, as though they were members of approved societies. Two-ninths of the cost of such benefits in the case of men and one quarter in the case of women will be paid by the State as in other cases. In order to be entitled to these benefits the exempted persons must comply with certain conditions imposed by the Commissioners (see Exempt Persons' Benefits Regulations, and Section 9, N.I.A., 1913).

An exempted person whose total income from all sources exceeds £160 a year must, however, make his own arrangements for receiving medical attendance and treatment in accordance with Section 15 (3), N.I.A., 1911, Section 9, N.I.A., 1913.

In Ireland the benefits to be provided from the fund are such as the Irish Commissioners may prescribe (Section 9, N.I.A., 1913).

Benefits.—The principal benefits are five in number, namely, sickness benefit, disablement benefit, maternity benefit, medical benefit, and sanatorium benefit. There are also a number of “additional benefits” which may be offered in accordance with the provisions of Sections 9 (2), 13 and 37 (1) (a), (c), (d), N.I.A., 1911. These additional benefits are set out in Part II of Schedule IV, N.I.A., 1911, and are as follows—

1. Medical treatment and attendance for any persons dependent upon the labour of a member.

2. The payment of the whole or any part of the cost of dental treatment.

3. An increase of sickness benefit or disablement benefit in the case either of all members of the society or of such of them as have any children or any specified number of children wholly or in part dependent upon them.

4. Payment of sickness benefit from the first, second, or third day after the commencement of the disease or disablement.

5. The payment of a disablement allowance to members though not totally incapable of work.

6. An increase of maternity benefit.

7. Allowances to a member during convalescence from some disease or disablement in respect of which sickness benefit or disablement benefit has been payable.

8. The building or leasing of premises suitable for convalescent homes and the maintenance of such homes.

9. The payment of pensions or superannuation allowances whether by way of addition to old age pensions under the Old Age Pensions Act 1908, or otherwise.

10. The payment, subject to the prescribed conditions, of contributions to superannuation funds in which the members are interested (see Contributions to Superannuation Funds Regulations).

11. Payments to members who are in want or distress including the remission of arrears whenever such arrears may have become due.

12. Payments for the personal use of a member who, by

reason of being an inmate of a hospital or other institution, is not in receipt of sickness benefit or disablement benefit.

13. Payments to members not allowed to attend work on account of infection.

14. Repayment of the whole or any part of contributions thereafter payable under Part I of this Act by members of the society or any class thereof.

With certain exceptions seven-ninths of the cost of benefits and of administration are payable out of contributions, and two-ninths by the State in the case of men. For women the respective proportions are three-quarters and one-quarter (Section 3, N.I.A., 1911).

Sickness Benefit.—This is a periodical money payment made to the insured person whilst rendered incapable of work by some specific disease or bodily or mental disablement. Payments begin on the fourth day of the incapacity and may continue for twenty-six weeks. A day on which the person was prevented by the incapacity from doing any effective work is to be reckoned in counting the four days, but not a Sunday unless it is a working day. No one is entitled to this benefit until he has been insured twenty-six weeks and twenty-six contributions have been paid. The right to this benefit ceases at the age of seventy. The ordinary rate of payment is 10s. per week for men and 7s. 6d. per week for women, but in the case of unmarried minors this is reduced for males to 6s. per week for the first thirteen weeks, and 5s. per week for the second thirteen weeks; for females 5s. a week for the first thirteen weeks and 4s. a week for the second thirteen weeks (Sections 8 (1) (c), (2), (3), (8) (b), 9 (1), Schedule IV, Part I, Tables A and B, N.I.A., 1911, Section 13, N.I.A., 1913).

If any person of the age of seventeen or upwards becomes an employed contributor after October 12, 1913, not having been previously insured, his sickness benefit will be at a reduced rate, though not less than 5s. a week. These reduced rates of sickness benefit are set out in the Reduced Rate of Sickness Benefit, etc., Regulations.

Such a person is, however, entitled to sickness benefit at the ordinary rate : (a) if, since he attained the age of seventeen, he has spent his time in a school or college, or in indentured apprenticeship, or otherwise under instruction without wages or in completing his education ; or, (b) if he pays the difference between the voluntary rate and the employed rate of contributions, or the capital value of that difference as set forth in the Reduced Rate of Sickness Benefit Regulations. Such a person is also, if he chooses, entitled to sickness benefit calculated as if he had entered into employment on his seventeenth birthday or on October 12, 1913, whichever is later, and was in arrears for all contributions between that day and the day when he actually became employed (Section 9 (4), N.I.A., 1911, Section 2 (1), N.I.A., 1913 ; see also Circulars A.S. 122 and A.S. 144).

Disablement Benefit.—This is a periodical money payment payable after the right to sickness benefit has been exhausted and continuing so long as the incapacity continues. No one is entitled to this benefit until he has been insured two years, and one hundred and four contributions have been paid. This benefit ceases at the age of seventy. The ordinary rate of payment is 5*s.* per week for both men and women, but in the case of unmarried female minors it is reduced to 4*s.* a week (Section 8 (1) (d), (2), (3), (8) (c), 9 (1) ; Schedule IV, Part I, Tables A and B, N.I.A., 1911).

Approved societies are, however, bound to allow full sickness and disablement benefits to unmarried minors who have relatives dependent on them. They may also reduce both benefits in any case where they exceed two-thirds of the usual rate of wages of the insured persons. But the consent of the Insurance Commissioners must be obtained for this, and additional benefits of equivalent value substituted. For suggestions as to reductions and equivalent additional benefits see "Table H," Circular A.S. 150, Section 9 (1), (2), N.I.A., 1911.

Societies also have the option of diminishing or entirely

withdrawing sickness and disablement benefits and of substituting one or more of the additional benefits. But in order to do this a scheme must be prepared by the society and approved by the Insurance Commissioners (Section 13, N.I.A., 1911). Schemes of this kind are most suitable for insured persons who, during sickness, receive from their employers benefits equivalent to the sickness benefit of the Act, and whose employment is of such a nature that they may reasonably expect regular employment over a long period of time, *e. g.* teachers, clerks, shop-assistants, and domestic servants. A model scheme for providing pensions in substitution for sickness and disablement benefits has been prepared and published. (Cd. 6292 (1912).)

Where an approved society pays a superannuation allowance or pension as an additional benefit, or where it contributes, under paragraph 10 of Part II of Schedule IV, N.I.A., 1911 (see p. 179 above), to some fund out of which the allowance or pension is paid, it may require members receiving such allowances or pensions to give up wholly or in part their right to sickness or disablement benefit or both (Section 8 (7), N.I.A., 1911).

One period of disease or disablement will be treated as a continuation of another unless a period of twelve months has elapsed. Thus, if a person is ill and draws sickness benefit for twenty weeks, then recovers and goes back to work for ten weeks and then falls ill again, he can only draw sickness benefit for six weeks. If his illness continues beyond this he is, however, entitled to draw disablement benefit if he has been insured two years and has paid two years' contributions. Where one illness is thus treated as a continuation of another, sickness benefit begins on the first day (Section 8 (5), N.I.A., 1911, Section 12 (1), N.I.A., 1913; see also Circular A.S., 129).

Sickness and disablement benefit may be suspended where the disease or disablement is due to misconduct, if the rules of the society so provide (Section 14 (2), (4), N.I.A., 1911).

As to claims for sickness and disablement benefits made during confinement (see Section 8 (6), Schedule IV, Part I, Table D, N.I.A., 1911, and Circular A.S. 143).

Where an insured person has been injured and is entitled to compensation under the Workmen's Compensation Act 1906, or to damages under the Employers' Liability Act 1880, or at common law, the compensation or damages must be taken into account if he claims sickness or disablement benefit in respect of the injury. If the compensation is a weekly payment, equal to or greater than the sickness or disablement benefit, then no benefit is payable; if the weekly compensation payment is less than the benefit, then only the difference is payable. Where the compensation or damages takes the form of a lump sum the approved society or Insurance Committee must estimate the weekly value of it and take this weekly value into account in paying benefit. Where an insured person unreasonably refuses or neglects to take legal proceedings to recover compensation or damages due to him, the approved society or insurance committee may either take such proceedings at its own expense, or may withhold payment of any benefit to which he is otherwise entitled.

It is, however, open to the society or committee to pay full benefit pending the settlement of the claim for compensation. The amount so paid may afterwards be recovered either directly, or by suspending or making deductions from other benefits which may become payable.

In the event of an employer agreeing to pay as compensation a weekly sum of less than 10s. a week, or to pay a lump sum in redemption of all weekly payments, he must, within three days, give written notice of the agreement either to the approved society or insurance committee, or to the Insurance Commissioners. The agreement must also be registered by the Registrar of the County Court. It is the registrar's duty to refuse to record the agreement and to refer it to the judge, if he considers the amount inadequate, or has reason to believe that the agreement has been procured by fraud,

undue influence, or other improper means (Section 11, N.I.A., 1911 and Schedule II, 9 (*d*), W.C.A., 1906, Compensation Agreements Regulations, 1913; see also Workmen's Compensation Rules, 1907-1913, and Circulars A.S. 129 and A.S. 136, Form A.S. 152).

Where an insured person receives weekly as sickness or disablement benefit a sum of money sufficient to make the weekly sum paid as compensation, etc., equal to the amount of the full benefit, the number of weeks he will be deemed to have been "on benefit" is the same proportion of the total number of weeks during which the payments have been made, as the weekly sums actually paid are of the full benefit. Thus an insured person receives under the Workmen's Compensation Act 8*s.* a week for ten weeks. He receives as sickness benefit a weekly sum sufficient to make this into 10*s.*, *i. e.* 2*s.* This is only one-fifth of the full sickness benefit, so he will be regarded as having been "on benefit" for one-fifth of ten weeks, *i. e.* two weeks (Section 12 (2), N.I.A., 1913).

Any pension, etc., granted in pursuance of the Injuries in War (Compensation) Acts 1914, 1914 (Session 2) and 1915, will be treated as if it were compensation under the Workmen's Compensation Act, and Section 11, N.I.A., 1911, will apply accordingly (Section 2, N.I. (Part I, Amendment) Act, 1915; Circulars A.S. 163 and A.S. 136*A*, Injuries in War Compensation Regulations).

Maternity Benefit.—This is a payment of 30*s.* in the case of the confinement of an insured woman or the wife or widow¹ of an insured man. This benefit cannot be claimed unless the insured person has been insured twenty-six weeks (fifty-two weeks if a voluntary contributor) and twenty-six weekly contributions (fifty-two if a voluntary contributor) have been paid. Whether the mother is an insured person, or the wife or widow of an

¹ In cases where the widow of an insured person is mentioned in connection with maternity benefit it is, of course, understood that the child is the posthumous child of the insured person.

insured person the maternity benefit is her benefit and must be administered in cash or otherwise by the approved society or the Insurance Committee. Where the benefit is paid in respect of the husband's insurance the receipt either of the wife or the husband¹ is a good discharge to the society or committee, and if it is paid to the husband it is his duty to pay it to the wife. Where the benefit is given or paid to a husband it is his duty to make adequate provision for the wife during confinement and for four weeks after delivery. If he neglects or refuses to do this he is liable to one month's imprisonment (Section 8 (1) (e), (8) (d), 18 (1), 19, N.I.A., 1911; Section 14 (1), N.I.A., 1913).

Where the wife or widow of an insured person is confined and she herself is also insured she is entitled to double maternity benefit, *i. e.* to benefit in respect both of her own insurance and of her husband's insurance. If the husband is not (or was not at his death) an insured person she is entitled to double benefit in respect of her own insurance. But in such cases the woman must abstain from remunerative work for four weeks. If the husband is or was not "in benefit," either by reason of an insufficient number of contributions having been paid, or on account of arrears, the wife (or widow) is entitled to double benefit in respect of her own insurance. A similar provision applies where the husband is (or was) a deposit contributor (Section 14 (2), (3), N.I.A., 1913).

An insured woman is not entitled to sickness or disablement benefit for a period of four weeks after confinement unless she is suffering from some disease or disablement not connected with her confinement, nor is she entitled to medical benefit in respect of the confinement (Section 8 (6), N.I.A., 1911).

The mother has a right to free choice of doctor or midwife (Section 18 (1), N.I.A., 1911). Section 44 (2), Proviso and Schedule IV, Part III, give in certain cases a benefit somewhat like maternity benefit (see p. 227 below).

A married woman cannot, unless she is also in fault,

¹ If authorised by the wife.

be deprived of maternity benefit because her husband has broken the rules of his society or has been guilty of dishonesty (Section 14 (2) (f), N.I.A., 1911).

(For detailed information regarding the administration of maternity benefit, see Circulars A.S. 73, 78, 117, 125, 143.)

Definition of Confinement.—In the model rules issued by the Insurance Commissioners confinement is defined as “labour resulting in the issue of a living child, or labour after twenty-eight weeks of pregnancy resulting in the issue of a child whether alive or dead.”

Sickness, disablement, or maternity benefit is not to be paid to any person who is an inmate of a workhouse, hospital, asylum, convalescent home, or infirmary supported by any public authority or out of public funds, or by a charity or voluntary subscriptions, or of a sanatorium. If he or she has any dependents the whole or part of the benefit may be applied for their relief or maintenance, and the balance may be expended on surgical appliances or otherwise for his or her benefit after leaving the institution, or shall be paid to him or her in a lump sum or by instalments. If he or she has no dependents, is a member of an approved society, and is an inmate of a sanatorium, the whole benefit must be paid over to the Insurance Committee for the general purposes of the sanatorium; but if he or she is an inmate of any of the other institutions mentioned (other than a workhouse), the society may pay the whole or part of the benefit to the institution and expend the balance on surgical appliances, or otherwise, for his or her benefit after leaving the institution, or pay it to him or her in a lump sum or by instalments.

In the case of a married woman or widow ordinarily entitled to double maternity benefit under Section 14, N.I.A., 1913, not more than the single benefit may be paid for the relief and maintenance of her dependents. The other may be paid to the institution as if she had no dependents.

Where the uninsured wife of an insured man is an inmate of one of these institutions no maternity benefit is payable, but it may be dealt with in the same way as sickness or disablement benefit payable to himself might be dealt with if he were an inmate (Section 12, N.I.A., 1911; Section 15, N.I.A., 1913; Circular A.S. 94).

Any sum otherwise due as sickness benefit, which is paid in accordance with the above sections, is to be treated as a payment of sickness benefit for the purpose of determining the rate and duration of sickness benefit (Section 15 (1), N.I.A., 1913; Circular A.S. 129).

In order to facilitate the payment of sickness, disablement, and maternity benefits in the case of societies who pay through the post, a system of payment by means of postal drafts has been instituted. The drafts are provided in various denominations, a charge of 5s. per fifty drafts being made to cover the expenses incurred by the Post Office. (See Circular $\frac{1020}{A.G.D.}$ and Form $\frac{1021}{A.G.D.}$.)

Approved Societies and Insurance Committees may subscribe to hospitals, dispensaries, etc., or for the support of nurses, and may appoint visiting nurses for insured persons (Section 21, N.I.A., 1911; see Circular A.S. 106 and Subscriptions and Donations Regulations).

Where an insured person, for the purpose of claiming sickness or disablement benefit, or for any other purpose under the Act, requires a medical certificate of incapacity for work, it must be issued in accordance with a scheme of the Commissioners outlined in Circular A.S. 156 and fully described in Memo $\frac{211}{I.C.}$. (See also Report on Excessive Sickness Benefit Claims, Cd. 7687 and Circular A.S. 161.)

Appeals against the granting or refusal of such certificates may be made to Medical Referees. (See Circulars A.S. 104, 104A, 165.)

Medical Benefit.—This benefit includes medical treatment and attendance, and the provision of medicine and

of such medical and surgical appliances as are prescribed in Schedule II of the Medical Benefit Regulations. The right to this benefit begins as soon as the person becomes insured and continues after the age of seventy. A person suspended from sickness and disablement benefit because the disease or disablement is due to his own misconduct is still entitled to medical benefit (Sections 8 (1) (a), (3), (8) (a), 14 (4), N.I.A., 1911).

Medical benefit is administered by the Insurance Committees in accordance with regulations made by the Insurance Commissioners. The National Insurance Acts sanction the following different ways of providing medical treatment and attendance (as distinguished from the provision of medicines, drugs, etc.)—

1. The Panel System. Under this system every Insurance Committee must prepare a “panel” or list of medical men who have agreed to attend and treat insured persons. Any duly qualified medical practitioner is entitled to have his name on the panel, but the Insurance Commissioners may remove the names of unsuitable men. Insured persons are entitled to choose their own doctors from amongst those on the panel, but the consent of the doctor selected is also necessary. The choice, when made, holds good to the end of the “medical year,” which terminates on December 31. An insured person desirous of changing his doctor must give notice before December 1. Those insured persons who have not chosen doctors, or who have chosen them but have been rejected, are distributed amongst all the doctors on the panel by arrangement with the doctors themselves. (Section 15 (1) (2) (a), (b), (c), (d), N.I.A., 1911; see also Medical Benefit Regulations 1913, Sections 6, 16, 17, 21, 25–30.)

2. Where insured persons in any locality are not receiving satisfactory medical treatment under the panel system, the Commissioners may (a) authorise the Insurance Committee to make other arrangements for securing a better service; or the Commissioners themselves may undertake the arrangements; or (b) may require insured

persons in the locality in question to make their own arrangements for receiving medical attendance and treatment, including medicine and appliances, the Insurance Committee or the Commissioners undertaking to pay the cost of it according to some fixed scale. (Section 11, N.I.A., 1913; see also Proviso to Section 15 (2), N.I.A., 1911, designed to meet difficulties which might be caused by the failure of the panel system, when the Act first came into force.)

The following persons may receive medical attendance and treatment (but not drugs and medicines) on the same terms as ordinary insured persons, provided that they were on December 16, 1911 and still are, members of a society which has become an approved society—

1. Persons who, being of the age of sixty-five or upwards, on July 15, 1912, were not entitled to medical benefit under the Act.

2. Persons who, being permanently disabled on July 15, 1912, were not entitled to become insured persons.

Where the society is not a friendly society the provision only applies if the members in question were, on December 16, 1911, entitled to receive medical attendance and treatment through the society. The cost of this partial medical benefit will have to be met out of the private funds of the society, though Parliament makes a grant in aid to the societies in respect of every such member. The medical benefit is administered by the society and not by the Insurance Committee, the society making its own contract with the panel doctors, and only appealing to the Insurance Committee if a doctor refuses to attend such members on the same terms as he attends insured persons. (Section 15 (2) (e), N.I.A., 1911; Section 10 (2), N.I.A., 1913; see also Memo $\frac{155}{A.S.}$; Memo $\frac{205}{A.S.}$; Circular A.S. 75; Medical Benefit Regulations, 1913, Section 79.)

The following persons are not entitled to medical benefit—

1. Any voluntary contributor whose total yearly income

from all sources exceeds £160. The weekly contribution is however reduced by one penny (Section 10 (1), N.I.A., 1913). An Insurance Committee may also require insured persons whose income exceeds a certain limit (to be fixed by the Insurance Committee itself) to make their own arrangements for medical treatment. The Committee will, of course, in such cases contribute towards the cost of the treatment (Section 15 (3), N.I.A., 1911, and Medical Benefit Regulations, 1913, Sections 14, 44).

2. Any person over the age of seventy who entered into insurance when he was of the age of sixty-five or upwards, and in respect of whom twenty-six contributions have not been paid (Section 3 (2), Proviso, N.I.A., 1913).

Where an insured person is already entitled to receive medical attendance and treatment under some system or institution existing on December 16, 1911, such attendance and treatment may be treated as medical benefit under the Act, if the system or institution is approved by the Insurance Committee and the Commissioners. The Insurance Committee will contribute towards the expenses of the system or institution in question. An insured person who receives his medical benefit in this way is not deprived of his right to select his own doctor (Section 15 (4), N.I.A., 1911; Medical Benefit Regulations, 1913, Sections 13, 43).

The Acts sanction the three following ways of providing insured persons with medicines, drugs, and such medical and surgical appliances as the regulations allow—

1. The Panel System. Each Insurance Committee must prepare a panel of druggists, etc., who have agreed to supply these things to insured persons according to a scale of prices fixed by the Insurance Committee. All persons, firms, etc., authorised by law to supply any of these things are entitled to be on the panel unless the Insurance Commissioners consider them unsuitable.

2. If in any district the persons, etc., on the “druggists’ panel” are not, in the opinion of the Insurance Commissioners, capable of providing an adequate supply of medicines,

etc., the panel system may be dispensed with for that district, and the Insurance Committee may then make such other arrangements as the Insurance Commissioners may approve.

3. In exceptional cases only the doctor may be allowed to supply his patients with the necessary medicine, etc. (Section 15 (5), N.I.A., 1911; Medical Benefit Regulations 1913, Sections 7-12, 18, 19).

Medicine must be dispensed by duly qualified or experienced dispensers (Section 15(5); Proviso iii, N.I.A., 1911).

As to Local Medical Committees, Panel Committees, and Pharmaceutical Committees, see N.I.A., 1911, Section 62; N.I.A., 1913, Sections 32, 33; Medical Benefit Regulations, 1913; Panel Committee Regulations, Pharmaceutical Committee Regulations, Circular $\frac{44}{I.C.}$, Memo $\frac{194}{I.C.}$ and various model schemes.

Sanatorium Benefit.—This benefit is the treatment of persons suffering from tuberculosis or any other disease specified by the Local Government Board. The treatment may take place—

(a) In a sanatorium or other residential institution, *e. g.* a hospital, farm colony, open-air school, etc. The Insurance Committees do not provide these institutions. They must make arrangements with persons or local authorities (other than poor law authorities) having the management of such places, which must be approved by the Local Government Board (or in Wales by the Welsh Insurance Commissioners). A local authority may admit to its sanatorium, etc., persons resident outside its own area. As to the possibility of agreements with the Metropolitan Asylums Board for the use of their hospitals and sanatoria, see Section 39, N.I.A., 1913.

(b) Otherwise than in an institution, *e. g.* at the home of the patient or at a dispensary or other non-residential institution. In this case also the Insurance Committee does not itself provide the treatment, but must make arrangements with persons or local authorities (other than

poor law authorities) who do provide it. The manner in which the treatment is given to insured persons must be approved by the Local Government Board (see Order of L.G.B., July 26, 1912).

The benefit is administered by the Insurance Committees, and there is no right to it unless the Insurance Committee recommends the case; but a person may be recommended for the benefit immediately after entering into insurance. Insurance Committees have a discretionary power to extend the benefit to dependents of insured persons. They may also defray the expenses of conveying an insured person to or from a sanatorium or other institution. (Sections 8 (1) (b), 16 (1), (3), (4), 14 (1), 17 (1), N.I.A., 1911; Section 42, N.I.A., 1913; see also Report of Departmental Committee on Tuberculosis; Memo $\frac{112}{I.C.}$, and Circular Med. 1, on the Administration of Sanatorium Benefit; also Memorandum and Return of February, 1913, Cd. 6625.)

A capital sum of £1,500,000, set aside by Parliament in the Finance Act 1911, is, by Section 64, N.I.A., 1911, to be distributed by the Local Government Board in grants for providing and aiding sanatoria and other institutions. County councils and county borough councils receiving such grants may be authorised by the Local Government Board to build, maintain, and manage such institutions. The Local Government Board is also empowered to make orders for the constitution of joint boards, joint committees etc., of county councils, county borough councils, and other local authorities (not being poor law authorities) for the purpose of co-operating in the provision of sanatoria, etc. An Insurance Committee may enter into an agreement with any person or local authority (not being a poor law authority) under which the person or authority is to provide sanatorium treatment, in a sanatorium or otherwise, and the committee is to contribute periodical fixed payments towards the cost of the treatment (Section 64, N.I.A., 1911).

To meet the yearly cost of sanatorium benefit 1s. 3d. per insured person is to be set aside out of the National Health Insurance Fund. In addition to this one penny per insured person is also to be paid by Parliament, but the amount so raised, or part of it, may be devoted to the purposes of research. (Section 16 (2), N.I.A., 1911; see also Medical Research Fund Regulations.)

General Provisions relating to Benefits.—Insured persons who frequently move from place to place in the course of their employment, *e. g.* actors, commercial travellers, etc., may receive their medical and sanatorium benefit under a special arrangement. (See Circular $\frac{124}{I.C.}$, and Medical Benefit Regulations, 1913, Section 78.)

By Section 49, N.I.A., 1911, persons between sixty-five and seventy employed within the meaning of the Act on July 15, 1912, were not entitled to full benefits. This section was, however, repealed by Section 3 (2), N.I.A., 1913, and such persons are now on the same footing as other employed contributors.

No insured person is entitled to medical benefit while resident either temporarily or permanently outside the United Kingdom. An insured person temporarily resident in the Isle of Man or the Channel Islands is entitled to all benefits except medical benefits. An insured person temporarily resident outside the United Kingdom, elsewhere than in the Isle of Man or the Channel Islands, may receive sickness or disablement benefit, if his society (or the Insurance Committee in the case of a deposit contributor) has consented to his residing abroad. Where the wife of an insured person is in the United Kingdom at the time of her confinement she is entitled to receive maternity benefit even though her husband is resident outside the United Kingdom. (Section 8 (4), N.I.A., 1911.)

Where there is excessive sickness amongst insured persons due to—

- (a) the conditions or nature of employment; or,
- (b) bad housing or insanitary conditions; or,

- (c) insufficient or contaminated water-supply ; or,
- (d) non-observance or non-enforcement of the health provisions of the Factories Acts, Mines Acts, Public Health Acts, Housing Acts, etc., etc.,

the persons or bodies in default are liable to make good any excessive expenditure incurred by approved societies or insurance committees. (For details as to procedure in such cases see Section 63, N.I.A., 1911.)

Contributions : Employed Rate.—The employed rate is the rate of contribution for employed contributors. As a general rule it is 7*d.* a week for men (the employer contributing 3*d.* of it), and 6*d.* a week for women (the employer contributing 3*d.* of it). In the case of certain “low wage contributors,” who are over twenty-one and are not boarded and lodged by their employers, the employed rate is as follows—

1. Where the rate of pay does not exceed 1*s.* 6*d.* per working day—for men 6*d.* (all paid by the employer); for women 5*d.* (all paid by the employer). To this is added in each case 1*d.* paid by the State.

2. Where the rate of pay exceeds 1*s.* 6*d.* but does not exceed 2*s.* per working day—for men 5*d.* by the employer, 1*d.* by the employee; for women, 4*d.* by the employer, 1*d.* by the employee. As before, 1*d.* by the State in both cases.

3. Where the rate of pay exceeds 2*s.* but does not exceed 2*s.* 6*d.* per working day—for men, 4*d.* by the employer, 3*d.* by the employee (the ordinary arrangement reversed); for women, 3*d.* by the employer, 3*d.* by the employee.

There are special cards for such contributors, and unless the proper card is used a declaration as to rate of remuneration must be signed on surrendering it.

Where the rate of remuneration of any class of workers employed by any employer or group of employers is normally within any of the above limits, the Commissioners may, by special order, declare that all persons employed by that employer or group of employers in that class of work shall be treated as if they were constantly

in receipt of the normal rate. (See Section 4 and Schedule II, N.I.A., 1911; Section 25, N.I.A., 1913; and Normal Rate of Remuneration Orders.)

In Ireland the contributions are at a lower rate all round (see Schedule II, Part II, N.I.A., 1911).

It is the employer's duty to pay both his own and the employee's contribution in the first place, but he is entitled to recover the amount of the employee's contribution from the employee. The following rules as to payment of contributions are important—

1. Contributions are, as a rule, paid by affixing stamps to a card which the contributor must obtain.

2. Contributions may be paid weekly or at other prescribed intervals.

3. For each calendar week (reckoned from one Sunday midnight to the next) in which a person is employed, whether for the whole week or a part, a weekly contribution must be paid.

4. Where no remuneration has been received and no work done during any week no contribution is payable.

5. Where no work has been done during any week and the employed person has received sickness or disablement benefit for the whole or part of the week no contribution is payable.

6. Where the employee does not receive wages or other money payments, either from his employer or from any other person, the employer must pay the whole of the contribution out of his own pocket. Where the employee receives no monetary payments from his employer, but does receive them from some other person,¹ the employer can recover the amount of the employee's contribution by legal proceedings if the employee refuses to refund it. In all other cases the employer cannot recover the employee's contribution except by deducting it from wages.

7. When contributions have been paid by the employer in respect of any period he may not make the corresponding

¹ A waiter in an hotel who depends entirely on "tips" for his remuneration is an example of an employee who receives money payments from a person other than his employer.

deduction from wages paid in respect of another period, nor may he deduct a larger sum than the amount of the contributions for the period in respect of which the wages are paid (except where the period is less than a week). Thus, in the case of a teacher paid monthly, it would not be permissible to deduct from the wages for May the contributions paid for the teacher in respect of April.

8. An agreement by an employee to allow his employer to deduct employer's as well as employee's contributions from wages is not binding.

9. Where a person is employed by two or more employers in one calendar week, the first employer is, as a rule, the one liable to pay the contribution. Such employers may, however, agree among themselves to pay the weekly contributions in rotation. A book containing a form of agreement may be obtained for this purpose by applying to the Insurance Commission. (See Collection of Contributions Consolidated Regulations, 1914, Part V.)

10. In certain cases where workmen, though directly employed by one person (immediate employer) are under the general control and management of another person (principal employer), the latter may be made responsible for the payment of contributions, and may deduct the amount of the employee's contributions from any sums payable by him to the immediate employer. The immediate employer may, in his turn, deduct them from the employee's wages. Such sub-contracting occurs in the coal-mining industry, where it is known as the "butty system." It is also common in the building trade. (For information as to the trades to which this rule applies see Collection of Contributions Consolidated Regulations, 1914, Part VI and Schedule IV.)

11. Any employer of outworkers may, by giving notice to the Insurance Commissioners, be allowed to pay the contributions in respect of work given out by him by reference to the work actually done, instead of by reference to the weeks in which it was done. This device is intended to protect outworkers against the hardship of having to

make full contributions under the Act in periods when earnings are low.

In each trade a certain amount of work called a "unit of work" is taken as representing an average week's work. Thus, in the Ready-made and Wholesale Bespoke Tailoring Trade the unit is 24s. for men and 13s. for women. The employer pays a contribution for each unit of work or part of a unit. But when a contribution is paid for part of a unit, no further contribution need be paid until the full unit has been completed. (For fuller particulars of this system of payments see Collection of Contributions Consolidated Regulations, 1914, Part IV, and Schedule III; and Willis' *National Health Insurance through Approved Societies*.)

12. All contributions, whether of voluntary or employed contributors, cease at the age of seventy.

13. The employer of a person who has obtained a certificate of exemption must pay the employer's contributions just as though the employee were not exempt (see p. 178 above).

Section 7 and Schedule III, N.I.A., 1911; Collection of Contributions Consolidated Regulations, 1914.

Firms employing a hundred persons or more may, with their employees' consent, arrange to have the contribution cards stamped quarterly (see Circular No. $\frac{105}{\text{A.G.D.}}$).

An employer may arrange with the Board of Trade that a labour exchange shall stamp insurance cards, or perform any other of his duties under the Act in respect of workmen to be engaged through the labour exchange or already in his employment at the date of the arrangement (Section 99 (1), N.I.A., 1911, and Board of Trade Regulations of June 25, 1912).

If an employer becomes a bankrupt the health insurance contributions of his employees for a period of four months are, with certain other preferential debts¹ such as wages, rates, taxes, and compensation under the Workmen's Compensation Act, to be paid in priority to all other

¹ See p. 271.

debts. The same rule holds good when a company is wound up (Section 110, N.I.A., 1911).

A person entitled to benefit under the Act cannot assign his rights to any other person (Section 111, N.I.A., 1911).

Where a trade is of a seasonal nature and subject to periodical fluctuations, the Commissioners may, by special order, reduce both employers' and employees' contributions for a certain period of the year, and increase them correspondingly for the remainder of the year. But before such an order is made it must be shown that the employers in the trade systematically employ their work-people throughout the year, working short time when trade is depressed. (Section 50, N.I.A., 1911); in this connection see also Schedule III (10), N.I.A., 1911, and pp. 196-197 above.)

In any case of casual or intermittent employment the Commissioners may, by special order, modify the ordinary provisions of the Act. Such an order may deal with: (a) the amount of the employers' and employees' contributions; (b) the payment, recovery, and collection of the contributions; (c) the apportionment amongst employers of the employer's contributions. The employer's contribution is not, however, to exceed 6*d.* per week, nor the employee's contribution 4*d.* per week for a man, or 3*d.* per week for a woman; nor must the employee's contribution for any one day exceed 1*d.*

An order of this kind may apply (a) generally, or (b) to any one or more particular trades or industries, or branches thereof, or (c) to any one or more particular localities (Section 19, N.I.A., 1913).

The person who is to be deemed to be the employer of any outworkers or any class of outworkers may be specified in a special order of the Insurance Commissioners (Section 26, N.I.A., 1913).

An employer who fails to pay contributions which he is liable to pay may be fined £10 and may also be ordered to pay the amount of such contributions. And if, by reason of the employers' failure to pay the contributions a member of an approved society is deprived of his right

to any benefits, the latter may sue the employer in a civil action and the employer may be ordered to pay to the Commissioners a sum equal to the value of this right. On the payment of this sum the employee will become entitled to benefit. An employer who deducts or attempts to deduct his own share of the contribution from the employee's wages is also guilty of an offence and may be fined £10 (see Sections 69 and 70, N.I.A., 1911; Section 34, N.I.A., 1913).

The "Voluntary Rate."—This is the rate of contribution for voluntary contributors. It varies considerably. For persons who, being under the age of forty-five, entered into insurance before October 13, 1913, the rate is the same as the employed rate. For persons of forty-five and over who entered into insurance before this date the rate varies with the age from 9d. to 1s. 3d. for men, and from 8d. to 1s. 0½d. for women. For persons of all ages between sixteen and seventy entering into insurance on or after October 13, 1913, the rate varies from 7d. to 1s. 4½d. for men, and from 6d. to 1s. 2d. for women. The rates may be ascertained from the tables contained in the Voluntary Rate Regulations.

Where a person who has been an employed contributor for five years or more becomes a voluntary contributor, he will continue to pay the employed rate.

Where a voluntary contributor who is a member of an approved society becomes employed within the meaning of the Act, he should give notice of his wish to be transferred to the employed rate, otherwise the voluntary rate will continue to be payable, and he will be bound to pay the difference between this and the amount of the employed rate paid in the ordinary way by his employer. Should he give notice and begin to pay the employed rate, he will be entitled to a reduced sickness benefit (see p. 180 above), as though he had only newly entered into insurance, with an addition representing the value of his previous contributions. The amount of this addition may be ascertained from tables issued by the Commissioners.

An employed contributor of less than five years' standing,

who becomes a voluntary contributor, will be deemed to be in arrear for the difference between the actual contributions actually paid by him while an employed contributor, and the contributions at the voluntary rate for the same time. Moreover, the difference between his reserve value as an employed contributor and the reserve value he would have had as a voluntary contributor will be cancelled. (Sections 5 and 6, N.I.A., 1911; Collection of Contributions Consolidated Regulations, 1914, Part III; Voluntary Rate Regulations.)

As to refund of contributions paid by a person erroneously believing himself to be an employed contributor, and the recouping of the society for any expenses incurred in respect of such person, see Circulars A.S. 105 and 171.

Arrears.—The reduction, postponement, or suspension of benefits on account of arrears in contributions, which were formerly regulated by Section 10 (1), (2), of the Act of 1911, are, by Section 8 of the Act of 1913, left within the discretion of Commissioners, so, however, that any reduction, postponement, or suspension of benefit shall be approximately equivalent to the loss occasioned by the arrears.

The main features of the Commissioner's scheme for dealing with arrears of employed contributors are as follows—

1. A member of a society who is not by reason of arrears disqualified for full benefit at the beginning of the "contribution year" (June or July) will not, during the following year, be affected by any arrears which may subsequently accrue.

2. He will, at the end of the year, be given thirteen weeks—called the "period of grace"—to pay off the arrears.

3. If he omits to pay them off his benefits will, during the year following (November to November), called the "penalty year," be reduced or suspended entirely, according to the number of arrears.

4. If he has been suspended from sickness and disablement benefit for two successive years and is required to be suspended for a further year, he ceases to be entitled to any benefits.

5. At the end of every contribution year every member has credited to him a certain number of contributions called "reserve contributions." This number now varies from one to three, though in the first year of the scheme it might be as high as six. If the number of arrears is greater than the number of reserve contributions the difference is known as the "penalty arrears." By deducting from the penalty arrears any arrears paid during the period of grace the "net penalty arrears" are obtained. These determine the reduction, etc., of benefits.

6. If the reserve contributions exceed the actual arrears, the balance is carried forward and added on to next year's reserve contributions.

7. An "arrears benevolent fund" has been created with money voted by Parliament.¹ Out of this fund societies may, during the period of grace, discharge penalty arrears which are due to genuine unemployment.

(For full details of the scheme see Arrears Regulations, also Circulars $\frac{37 F}{A.G.D.}$, $\frac{37 G}{A.G.D.}$, $\frac{37 M}{A.G.D.}$, $\frac{424 (a)}{A.G.D.}$, $\frac{424 (b)}{A.G.D.}$; or Willis' *National Health Insurance through Approved Societies*.)

No account will be taken of any arrears accruing—

(a) During any period when the insured person is rendered incapable of work by some specific disease, or by bodily or mental disablement.

(b) During the whole of any period, exceeding six months, during which the insured person was an inmate of and supported by an institution to which a certificate of exemption has been granted under the Act (see p. 230 below).

(c) In the case of maternity benefit payable in respect of the posthumous child of an insured person, during the period subsequent to the father's death.

(d) In the case of an insured woman entitled to maternity benefit, during two weeks before and four weeks after delivery.

¹ At the time of going to press the Parliamentary grant to the fund has been suspended.

Arrears are also disregarded in certain cases in favour of married women and widows (see pp. 227–229 below).

Sections 10 (4), 44, 51.

Where a member of an approved society who is in arrears owing to unemployment pays that part of the arrears which represents his own share of the contributions,¹ the society must excuse the part representing the employer's share. In making the necessary calculations the rate of remuneration shall be deemed to be over half a crown a day, unless he proves the contrary (Section 7 (1), N.I.A., 1913; see also Circular A.S. 124).

As to the effect of temporary unemployment, see Section 79, N.I.A., 1911, and Circular A.S. 159.

The amount of the employer's contributions thus excused, in cases where the insured person pays his own share of the contributions in arrears, may be refunded to the society out of its reserve values in the following way: On the society or branch proving that in respect of its employed contributors the total number of weekly contributions in arrears in any year has exceeded the standard number of three per member, there will be paid to it a certain amount, prescribed by the Commissioners, for every week by which the standard has been exceeded, but not exceeding the total amount excused (Section 7 (2), N.I.A., 1913).

As to arrears of persons who have been treated provisionally as out of insurance, see Circular A.S. 118, par. 4, and Circular A.S. 150.

APPROVED SOCIETIES

Any body of persons² (whether incorporated or not) may become an approved society under the National Insurance Acts, if it is registered or established under any Act of Parliament, or by Royal Charter, or, if not so registered

¹ In the case of a "low wage contributor," p. 194 above, the State penny must also be paid by the workman.

² The Acts do not prescribe a minimum number of members for a society seeking approval. The Commissioners have approved societies with a membership of less than fifty. (See Section 18, N.I.A., 1913.)

or established, has such a constitution as the Insurance Commissioners may prescribe. The registered associations which become approved societies are principally friendly societies, trade unions, collecting societies, and industrial assurance companies. The words "if not registered or established" cover unregistered trade unions and friendly societies.

Any such body as above mentioned may, for the purposes of the Acts, establish a separate section consisting of insured persons; and this may become an approved society. As non-insured persons may be honorary members of the separate section, it is possible for members of the management committee of the parent body to take part in the management of the affairs of the approved society section, even though they are not insured persons.

In order to receive approval a society must satisfy the following conditions—

1. It must not be carried on for profit.
2. Its constitution must, as a rule, provide for its affairs being subject to the absolute control of those of its members who are insured persons. But if the rules of the society provide for its affairs being controlled by all its members whether insured or not, the society may, nevertheless, be approved.
3. Where the affairs of a society are managed by delegates elected by members, provision must be made for the election and removal of the committee of management or other governing body of the society by the delegates. And where the society's affairs are not managed by delegates the provision for such election and removal must be made in such a manner as will secure absolute control by the members.

If the society has honorary members provision must be made for excluding them from voting in their capacity as members on all questions and matters relating to National Health Insurance (Section 23, N.I.A., 1911; see also Constitution of Sections Regulations and Constitution of Unregistered Societies Regulations).

It should be noticed that no branch of a society will

be recognised for the purposes of National Health Insurance unless it has been separately registered (section 79).

The approval of a society may be withdrawn in the following cases—

1. Where the society or any branch fails to comply with the requirements of the Act.

2. Where the society, or a branch, or the body of which the society forms a separate section, is convicted of an offence under any Act (Section 29, N.I.A., 1911; see also Withdrawal of Approval Regulations).

Approved societies and their branches are required to give security against any malversation or misappropriation of National Health Insurance Funds by their officers. But this is not necessary when a society, having other funds of its own, makes all necessary payments out of these in the first place, and is subsequently reimbursed out of National Health Insurance Funds.

The following forms of security are open to societies—

(a) A Central Guarantee Fund has been formed under the control of the Insurance Commissioners. Each society desiring to avail itself of this fund contributes $\frac{1}{2}d.$ per member per year, to be charged against administration expenses.

(b) Bond with personal sureties.

(c) Bond of a guarantee society.

(d) Deposit of securities.

(For further particulars relating to (a) see Form A.S. 13; as to (b), (c), and (d) see Circular A.S. 32.)

Where the security is given by depositing securities (*e. g.* mortgage deeds, bonds, debentures, stock and share warrants, etc., see Chapter V) the society's freedom to deal with these is not lost, for it may withdraw any securities so deposited and substitute others. The dividends, etc., arising from the securities are, of course, to be paid to the society (Section 26, N.I.A., 1911).

Every approved society must have rules for its own government, and these must be submitted to the Insurance Commissioners for approval. If the society and its rules are already registered under some Act of Parliament, *e. g.*

under the Trade Union or Friendly Societies Acts, the new rules must be registered in the same way. The requirements as to the rules of an approved society are set forth in Sections 14 (2), 27, and 67 N.I.A., 1911, and Section 27 (1), N.I.A., 1913. For detailed information the Model Rules issued by the Commissioners should be consulted.

Where a trade union, friendly society, or other body becomes an approved society, the ordinary rules of the body (on its private side) as to admission and rejection of applicants for membership, and as to expulsion of members, may be applied to insured members or persons desirous of becoming insured members. But no applicant is to be refused solely on account of age (see Section 30, N.I.A., 1911).

A minor may be a member of an approved society, but not a trustee, member of committee, or officer (Section 74, N.I.A., 1911).

The suspension of a member of a society from benefits does not deprive him of his membership (Section 79, N.I.A., 1911).

The Act does not affect the right of a body which becomes an approved society to reject or expel from membership on the private side any person who is not an insured person; nor does it affect in any way the position of the society or its members in regard to matters outside the Act (Section 34, N.I.A., 1911).

Approved societies and branches must fix their meeting-places in accordance with the regulations of the Insurance Commissioners. Under these regulations they may be allowed (with or without payment) the use of buildings and offices of Government departments and of local authorities, *e. g.* labour exchanges, etc. (Section 27 (2), N.I.A., 1911; see also Place of Meeting of Approved Societies Regulations).

A branch desiring to withdraw or secede from its parent society must comply with all the conditions necessary to its becoming an approved society, and must obtain the consent of the Insurance Commissioners to its withdrawal

or secession. This, however, is not necessary if the branch makes satisfactory arrangements for transferring its insured members to other branches of the parent society or to other societies. No branch may be expelled from an approved society unless proper provision is made for its insured members. The consent of the Insurance Commissioners is necessary for the dissolution of a society, and proper steps must be taken for securing the interests of the insured members (Section 28, N.I.A., 1911). See *Dissolution of Societies Regulations and Memorandum thereon*. As to amalgamation of societies or branches and transfer of engagements, see Section 28 and Schedule I, N.I.A., 1913; *Amalgamation and Transfer of Engagements Regulations and Memorandum thereon*; and Willis' *National Health Insurance through Approved Societies*.

An insured person may be transferred from one approved society to another, or from one branch to another in the same society. If the society or branch which he leaves consents to his leaving, or has expelled him, there is transferred from the old to the new society a sum of money known as the "transfer value" of the member. This represents the liability of the old society in respect of such member. Tables of transfer values are issued by the Insurance Commissioners in their *Transfer Values Regulations*.

A society must not unreasonably withhold its consent where a member desires to be transferred (Section 31, N.I.A., 1911; see also Circular A.S. 92).

An approved society member of five years' standing who goes abroad permanently to live may be allowed by the society to continue his membership for "private benefits," *i. e.* benefits other than those under the Act. In such a case his transfer value, or a part of it, may be carried from the "State" side of the society to the "private" side (Sections 33 and 43 (1) (a), N.I.A., 1911).

Regarding transfers of members to foreign and colonial societies, etc., see Section 32, N.I.A., 1911.

A person may not, for the purposes of National Health Insurance, be at the same time a member of two approved

societies, nor both a deposit contributor and a member of an approved society (Section 34, N.I.A., 1911).

Accounts and Valuation.—Every approved society and every branch must keep its books and accounts relating to National Health Insurance matters separate from all its other books and accounts. The books and accounts relating to these matters must be kept in such form as the Insurance Commissioners prescribe in their Regulations. Such returns must be rendered as the Insurance Commissioners may require. So far as concerns the transactions of a society or branch in National Health Insurance matters the audit of accounts, valuation, and returns must be in accordance with the provisions of the National Health Insurance Act and not of the Trade Union Acts, Friendly Societies Acts, or any other Act, under which the society on its “private” side is constituted. And the funds and credits of the society or branch under the National Insurance Act are to be liable only for the obligations of the society on its “State” side, and must not be applied, either directly or indirectly, to its business on the “private” side (Section 35, N.I.A., 1911; see also Accounts of Approved Societies Regulations, and Societies Accounts and Administration Expenses Regulations).

A separate account must be kept of administration expenses. The amount per member which may be spent each half year on administration must not exceed 1s. 8½d. in the case of ordinary members, 1s. 2½d. in the case of women members who are special voluntary contributors, and 4d. in the case of naval and military members (Class B members). If more is required a special levy may be necessary (Section 35 (2), N.I.A., 1911; Societies’ Accounts and Administration Expenses Regulations; Circulars 145 (e), A.S. 140, “Transactions between Insurance Commissioners and Societies Regulations.” As to special arrangements during the war for naval and military members, see Circular A.S. 165).

A valuation of the assets and liabilities of every approved society and of every branch will, as a rule, be made every

three years by an official valuer. The Insurance Commissioners have a discretion either to lengthen or shorten this period, and they may order a valuation of any particular society when they think fit.

If the valuation shows a surplus, the society may submit to the Commissioners a scheme for distributing out of it one or more of the additional benefits, see p. 179. In the case of a society with branches, each branch having a surplus must pay over one-third of it to the central body, and may then, with the approval of the central body, submit to the Commissioners a scheme for distributing additional benefits out of the surplus remaining to it. The central body must apply the portions of the branch surpluses paid to it, together with any surplus in the central fund, in making good deficiencies shown by any branches. Any balance left may be distributed amongst the branches having a surplus, in proportion to the amount of such surpluses. These sums the branches will dispose of as part of their surpluses.

Should the funds of a society or branch show a deficiency after a scheme for a surplus has been sanctioned the distribution of additional benefits must cease until a surplus is shown.

A scheme for additional benefits should prescribe the conditions on which the benefits are to be granted, and, as far as practicable, provision should be made for reducing, suspending, or depriving of additional benefits where members are in arrears.

Such a scheme may, for the purpose of reckoning the rate of sickness benefit, reduce the amount to which members are deemed to be in arrears.

No additional benefits other than those specified in Schedule IV are permissible, and benefits payable on death are expressly forbidden (Section 37, N.I.A., 1911).

Where a deficiency is shown by a branch, three-quarters of it will, as a rule, be made good out of the surplus in the hands of the central body. The central body has, however, a discretion to make good the whole deficiency, or, where the deficiency is due to maladministration, it

may with the Commissioners' consent, refuse to make good any part of it.

A deficiency in a society without branches, or in a branch (so far as it is not made good by the central body) must be made good in accordance with a scheme prepared by the society, or branch (with the society's approval), and approved by the Commissioners. The scheme must provide for making good the deficiency within three years from the date of valuation, and any of the following methods may be adopted—

1. A compulsory levy by way of increase of the weekly rate of contributions.

2. Reduction of the rate of sickness benefit either for the whole or part of the period for which it is payable.

3. Deferring the day as from which sickness benefit is payable.

4. Reduction of the period during which sickness benefit is payable.

5. Increasing the period which must elapse between two periods of disease or disablement, to prevent one being treated as a continuation of the other.

6. Any other method approved by the Commissioners (Section 38, N.I.A., 1911).

Provision should be made in the rules of each society and branch for enforcing the payment of any compulsory levy made in accordance with such a scheme. In particular, a society or branch may consider it advisable to make a rule for enforcing payment of such a levy by requiring the workman's employer to pay it and deduct it from his wages.

Arrears of payments of levies are to reckon as though they were a part of the ordinary arrears of contributions.

The Commissioners may take over the administration of a society or branch which has not within six months¹ after the declaration of a deficiency, obtained sanction for a scheme for making it good; or if it is not enforcing the provisions of a scheme that has been sanctioned. But

¹ Where an inquiry as to excessive sickness is pending under Section 63, N.I.A. (see p. 193), this time may be extended.

they must, within a reasonable time, not exceeding three years, restore to the society or branch its powers of self-government, or transfer the members to some other society or to the Deposit Contributors' Fund.

Any person who is a member of the society or branch at the date when the deficiency is disclosed, will, if transferred to another society or branch before it is made good, be liable to any levy or reduction of benefits as if he were still a member. If the transfer takes place before the scheme for making the deficiency good is sanctioned, the amount of any transfer value paid in respect of him must be adjusted. Any person over seventy and any one joining a society after the valuation is not affected by the scheme for making good the deficiency.

A member liable to a levy payable at intervals or to a reduction of benefits may free himself from the liability by paying to the Commissioners a lump sum.

In the event of a dispute between the Commissioners and a society or branch as to the amount of the deficiency or the adequacy of the scheme for making it good, the question will be settled by an independent valuer appointed by the Lord Chief Justice. His decision is final. (Section 38, N.I.A., 1911.)

Grouping of Small Societies.—Societies with a membership of less than five thousand must, for the purposes of valuation, be associated with other societies. This association may take place in either of two ways—

1. A number of such societies, whose combined membership is at least five thousand, may voluntarily form an association with a central financial committee, the sanction of the Insurance Commissioners being obtained.

2. In each county or county borough all such societies which have their registered offices or principal places of business there, and which have not joined an association, will be compulsorily grouped together.

Societies with a membership of over five thousand may also, if they choose, join an association, and societies of less than fifty are admitted. In calculating the membership of a society for the purposes of this provision, the

following members are not to be counted: (a) female members who have been suspended from ordinary benefits on marriage, and who are not special voluntary contributors (see section 44); (b) members who are not insured persons. (Section 39 (1), (2), (3), (6), N.I.A., 1911; Section 18, N.I.A., 1913.)

At the valuation these associated and grouped societies will be in the same position as regards the application of surpluses as though they were branches and the association or group the parent society. The central financial committee of an association, or the Insurance Committee in the case of a group, will occupy the position of the central authority, but their approval will not be required for any scheme prepared by an associated or grouped society for the distribution of a surplus. Nor will they have any powers of control over the administration of associated or grouped societies, except the power of refusing to make good any part of a deficiency which is due to maladministration.

If the associated or grouped society has branches, these must be regarded as separate societies, so far as the provisions of the Act relating to surpluses and deficiencies are concerned. There is, however, one exception to this rule, viz. that a branch preparing a scheme for distributing a surplus, or making good a deficiency, must refer it to its parent society for approval.

Where the registered office or principal place of business of a grouped society is in one county or county borough, and more than one hundred, or more than one-sixth, of its members reside in another, the proper proportions of any surplus or deficiency of the society may be apportioned between the two Insurance Committees concerned (Section 39 (4), (5), (6), (7), (8), N.I.A., 1911).

An approved society may form its branches into groups according to the geographical area in which they are situated, and if, in any area, the number of members exceeds five thousand, the branches in that group may be treated as a separate society for the purposes of valuations, surpluses, and deficiencies (Section 40 (1), N.I.A., 1911).

This provision is useful to large societies with members in various parts of the country, some in healthy and others in unhealthy districts. The system of geographical grouping prevents the unhealthy districts from being a burden on the healthy ones, and at the same time keeps intact the organisation of the society for other purposes.

Members of a society with branches who are not attached to any branch, must, for the purposes of valuations, surpluses, and deficiencies, be treated as all belonging to a separate branch (Section 40 (3), N.I.A., 1911).

A society without branches, and having both male and female members, may provide in its rules that, for the purposes of valuation, etc., male and female members shall be regarded as forming two branches (Section 41, N.I.A., 1911).

A society may provide in its rules for branches re-insuring with the society their liabilities in respect of any of the benefits under the Act. In the case of a society whose branches are grouped in geographical areas, the branches may reinsure either with the group or with the society. The Insurance Commissioners also have power to reinsure approved societies against their liabilities in respect of maternity benefit (Sections 40 (2), 20, N.I.A., 1911).

Employers' provident and superannuation funds may, on certain conditions, be constituted approved societies, and, if the membership is small may be exempted by the Commissioners from the necessity of being associated or grouped with other societies. (See Sections 25 and 39 (7), N.I.A., 1911; Circular A.S. 5.)

The establishing of a new system of contributions and benefits under the National Insurance Act necessitated a readjustment of the contributions to and the benefits provided by registered friendly societies and certain employers' provident funds, whether these became approved societies or not. As to the nature of these readjustments, see Sections 72 and 73, N.I.A., 1911; also suggestions and schemes issued by the Registry of Friendly Societies.

(For fuller information as to approved societies, the reader

is referred to Willis' *National Health Insurance through Approved Societies.*)

THE INSURANCE COMMISSION

The administration of Part I of the Act, relating to Health Insurance, is in the hands of separate bodies of Commissioners for England, Scotland, Ireland, and Wales respectively. The Commissioners are appointed by the Treasury, and on each of the four bodies there must be at least one duly qualified medical practitioner with personal experience of general practice. In each country there is an Advisory Committee appointed by the Commissioners, and consisting of representatives of associations of employers and approved societies, of duly qualified medical practitioners with personal experience of general practice, and of such other persons as the Commissioners may think fit, of whom two at least are women. The function of the Advisory Committee is to advise and assist the Commissioners in connection with the making and altering of regulations. (Sections 57, 58, 80, 81, 82, N.I.A., 1911.)

Power is conferred on the Commissioners, in Section 65 and various other sections of the Act of 1911, to make regulations in respect of various matters, and by Section 28 of the Act of 1913 this power is extended to a number of other matters specified in the first schedule of that Act.

There is also a Joint Committee of Commissioners consisting of members chosen from the four national bodies of Commissioners, with a chairman and either one or two other members appointed by the Treasury. The chairman may be a member of the House of Commons. The principal business of the joint committee is to make the necessary financial adjustments between the four national commissions, and to make regulations as to the valuations of "international" societies and branches. (Section 83, N.I.A., 1911; Section 16, N.I.A., 1913; see also Joint Committee Regulations.)

The existence of four independent bodies of Commissioners was a source of great inconvenience to those societies which operated in two or more countries of the United

Kingdom. Under Section 83 (3) of the Act of 1911 the members of an "international society" resident in each separate country of the United Kingdom were to be treated as a separate society for the purposes of valuations, surpluses, deficiencies, and transfers. By Section 16 (1) of the Act of 1913 this provision has ceased to have effect except where, within six months of the passing of the Act, the members resident in any country have desired it.

Such an "international society" must be approved in the country where its registered office is situated, and it may also be approved in every country in which it has members, though this is not necessary. It must not, however, admit as a member any person resident at the time of admission in a country in which it is not an approved society. A society approved in more than one country may relinquish its approval in any country other than that in which its registered office is situated, if either (a) none of its members are resident in that country, or (b) any of its members who are now resident in that country were, at the time of their admission to membership, resident in a country in which the society will remain an approved society. Admission to membership here means membership either on the "State" side or on the "private" side.

Where any members of a society reside in a country in which the society is not approved, their contributions and the State contributions in respect of them will be paid into the National Health Insurance Fund of the country in which the society or the branch to which they belong has its registered office. And all payments for benefits and administration expenses in respect of them will, of course, be made out of the same fund. This rule applies even when the members of the branch reside in the country where the society is approved if the registered office of the branch is in another country, unless the joint committee on the application of the society, determine otherwise. A branch to which this provision applies can only admit to membership persons resident in the country in which that branch has its registered office.

In order to facilitate the transfer of members between

Ireland and Great Britain, the transfer values and reserve values of persons resident in Ireland are to be calculated as if they were resident in Great Britain. Where a member of a society is living in Ireland when he reaches the age of seventy, the society must carry a prescribed portion of his transfer value to a separate account to be dealt with as may be prescribed.

FINANCIAL PROVISIONS

The combined effect of Sections 55 (1), (2), 5 (1) (a) and 9 (4), N.I.A., 1911, and Section 2 (1), N.I.A., 1913, is that a reserve value is credited to an approved society in respect of every member over the age of seventeen, not being an alien, or a voluntary contributor over forty-five, who joined the society before October 13, 1913. This reserve value is the sum necessary to meet the estimated loss to the society arising through the acceptance of a member of any age at the flat rate of contributions. The reserve values for male employed contributors vary from 9s. at the age of seventeen to £4 13s. at the age of thirty, £7 9s. at the age of forty, £10 13s. 6d. at the age of fifty, £10 17s. at the age of sixty, and £7 8s. at the age of sixty-four. For women employed contributors at the same ages, the values are 5s., £3 12s., £7 8s., £10 17s., £10 11s. 6d., and £6 15s. The reserve values for various classes of contributors at various ages are set out in tables published by the Commissioners. (See "Tables of Reserve Values Regulations" and Circulars A.S. 84, A.S. 84 (a), A.S. 84 (b), A.S. 84 (d).)

The sums credited to a society as reserve values bear interest at the rate of three per cent. (Section 55 (2), N.I.A., 1911). The reserve values are not free gifts made by the State to the approved societies, but are in the nature of loans, which are to be gradually liquidated in a period of from eighteen to twenty years. For the purposes of this liquidation the Commissioners will deduct from each weekly contribution of members of approved societies (except voluntary contributors of the age of forty-five or upwards, who entered into insurance before October 13, 1913) a sum of one penny and five-ninths in the case of

men, and one penny halfpenny in the case of women. When the approved societies' debt to the State in respect of reserve values has been thus liquidated, a considerable increase of benefits will take place (Section 55 (3) and 8 (9), N.I.A., 1911).

The stages by which insurance contributions are converted into benefits are (with certain modifications in respect of the special classes of insured persons, such as naval and military men, seamen, employees who receive wages during illness, married women and aliens) as follows—

1. The sums paid by employers and others into the Post Office for the purchase of stamps are paid into a fund called the National Health Insurance Fund. This fund is under the control and management of the Commissioners. Into the fund are also paid the State contributions of two-ninths (one quarter in the case of women) of the cost of all benefits.

2. In the books of the Commissioners each approved society is credited with the amount of the contributions paid in respect of its members, subject to the deduction of one penny and five-ninths, or one penny halfpenny per contribution, for male and female members respectively.

3. The society does not pay the Insurance Committee directly the cost of the medical and sanatorium benefits of its members and the cost of administration. The Commissioners make the payments, contributing from State funds two-ninths (in respect of men), or one-quarter (in respect of women) of the sum due, and debiting the society with the remaining seven-ninths, or three-quarters.

4. From time to time each society obtains from the Commissioners the sums requisite for paying sickness, disablement, and maternity benefits, together with the cost (not exceeding a certain sum) of administration. Of the sums thus paid only seven-ninths, in respect of male members, and three-quarters in respect of female members, are debited to the society, the remaining portions being paid out of State funds.

An approved society may either receive in advance the sums necessary for meeting benefit claims and defraying

administration expenses, or it may, in the first instance, pay them out of its own private funds and then claim reimbursement. (Sections 54, 55, 56, N.I.A., 1911; see also *Payment to Insurance Committees Regulations*.)

Investment of Surplus Funds.—Normally the sums credited each year to a society as contributions will exceed the amounts paid away in benefits, etc. The surplus will be available for investment. From time to time also the Commissioners will apportion amongst the societies the sums accumulated by them towards the liquidation of reserve values, crediting to each society the amount so apportioned. This will then be available for investment, and a corresponding portion of the reserve values will be written off.

Periodically the Commissioners ascertain what the sums thus available for investment by a society are. When this has been done the society may demand that four-sevenths ¹ (or, so far as the sums are attributable to women one-half) of the sums shall be paid over to it for investment in such of the authorised trustee securities (see p. 139 above), or other securities mentioned in Section 56 (2), N.I.A., 1911, as it may think fit. The remaining three-sevenths (or one-half) will be carried to a separate account, called the Investment Account, to be invested by the National Debt Commissioners. The society may, however, require the Commissioners to invest the four-sevenths (or one-half) on its behalf, or to allow it to go into the investment account. Where the Commissioners invest the money on behalf of a society at its request, the society may direct them to invest it in any of the above-mentioned securities in which the society itself could have invested it.

Sums in the investment account bear interest at the rate of three and a quarter per cent. All dividends and interest on investments must, of course, be devoted by the society to the purposes of the Act. (Sections 54 (3), 55 (4), 56, N.I.A., 1911; see also Circular $\frac{181}{\text{A.G.D.}}$; Rate

¹ These fractions represent the proportions of contributions paid by the insured persons as distinct from those paid by the employers.

of Interest on Sums in Investment Account Regulations; and Transactions between Insurance Commissioners and Societies Regulations.)

Approved societies and their branches are exempted from income tax in respect of any of their funds or credits or any investment thereof. The exemption must be claimed, and is allowed in the same manner as in the case of income applicable and applied to charitable purposes. (See Finance Act, 1912, Section 7.)

(For further details on the financial arrangements under the Act, see Willis' *National Health Insurance through Approved Societies*.)

SPECIAL CLASSES OF INSURED PERSONS

Naval and Military Men.—Men employed in the naval or military service of the Crown or in Officers' Training Corps are, by Schedule I, Part II of the N.I.A., 1911, excepted from the ordinary method of insurance, but are insured in the special manner prescribed in Section 46 N.I.A., 1911, as amended by various Acts passed during the war period.

The men coming within the scope of these provisions are—

1. Soldiers of the regular army who have been finally accepted for service.

2. Men of the Army Reserve when called out on permanent service.

3. Men of the Territorial Force when called out on embodiment.

4. Soldiers specially enlisted for the purposes of the present war, and all previously insured persons who serve during the present war as officers of the reserve or territorial force, or are granted temporary commissions in the regular forces during the continuance of the war.

5. Marines, including warrant officers of marines except Royal Marine gunners.

6. Marines who have enlisted for the purposes of the present war.

7. Seamen.

8. Seamen who have entered for the purposes of the present war.

9. Men belonging to the Naval Reserves when employed on service during war or any emergency.

10. Persons previously insured who serve during the present war as commissioned or warrant officers of the Naval Reserves.

The provisions of section 46, being primarily applicable to classes 1, 5 and 7 are adapted and modified by the regulations of the Insurance Commissioners to meet the needs of classes 2, 3, 4, 6, 8, 9 and 10, classes 3, 4, 6, 8, and 10 being subject to the same regulations. (Section 46 (1), (7), N.I.A., 1911; Section 22, N.I.A., 1913; Section 2, National Insurance (Navy and Army) Act, 1914 (session 2); Section 1 National Insurance (Navy and Army) Act, 1914; Circular A.S. 141; Leaflet No. 29.)

From the pay of every seaman, marine and soldier $1\frac{1}{2}d.$ per week is to be deducted, and in respect of every man the Admiralty or the Army Council will contribute $1\frac{1}{2}d.$ per week. Any man who has completed the period of his first engagement and has re-engaged for a pension, need not be insured unless he chooses. (Section 46 (1), N.I.A., 1911; Admiralty and Army Council Contributions Regulations, 1912; Naval and Military Forces Time Limits Regulations, 1912.)

Naval and military men may be members of approved societies. And any man who, at the date of his entry or enlistment was an insured person and a member of an approved society, or who, within a prescribed time not being more than six months from such date becomes a member of an approved society, will be treated as though he were an employed contributor, though, until his discharge, his position will be modified as follows—

1. The contribution, as already pointed out, is less.

2. He is not entitled to medical benefit, sanatorium benefit, sickness benefit, or disablement benefit. The military or naval authorities being bound to maintain him both during health and sickness for the period of his engagement, his approved society is relieved of this duty.

3. His wife is entitled to maternity benefit, though both he and she may be out of the United Kingdom at the time of the confinement. The society, of course, pays this benefit, and may arrange for it to be paid through the Admiralty or Army Council.

4. Reserve values are dealt with somewhat differently. (Section 46 (1), (2), N.I.A., 1911; Section 3, N.I. (Part I, Amendment) Act, 1915; Circulars A.S. 67, A.S. 72, A.S. 76; Naval and Military Forces Time Limits Regulations, 1913, Form No. $\frac{257}{\text{A.G.D.}}$; Collection of Contributions, Soldiers' Regulations; and Collection of Contributions, Navy and Marine Regulations.)

For the men who do not belong to an approved society there is a special fund, called the Navy and Army Insurance Fund. To this fund the contributions are credited after the Commissioners have deducted the proportion necessary for liquidating the reserve values. To the fund there is also credited a sum equal to 4*d.* for each weekly contribution paid in respect of each man who has not joined an approved society, and an equal sum is treated as having been expended on benefits, and the proper proportion thereof is accordingly paid to the fund by the State.¹

The only benefit available until discharge is maternity benefit, which is payable notwithstanding that both husband and wife are out of the United Kingdom. This is administered by the Admiralty or the Army Council either directly or through the Insurance Committees. As regards place of residence see Section 46 (4) (iii), N.I.A., 1911, and Circular A.S. 72A.

On discharge a transfer value is carried over from the Navy and Army Insurance Fund to the approved society which the man joins, or to the Deposit Contributors' Fund if he does not join a society.

Where a discharged man's state of health is such that he cannot gain admission to an approved society, he may, if he applies to the Commissioners within three months of

¹ The same sum is credited to an approved society in respect of each naval and military member, and is similarly dealt with.

his discharge, become entitled to benefits (other than additional benefits) at the full rate out of the Navy and Army Insurance Fund, such benefits being administered through the Insurance Committee of the area in which the man resides. Contributions will then, of course, be paid into the fund, and the State also contributes two-ninths of the cost of the benefits. (Section 46 (3), N.I.A., 1911; Section 3 (3), N.I. (Part I, Amendment) Act, 1915; Circulars A.S. 67, A.S. 76, A.S. 87, A.S. 134 and A.S. 155; Discharged Seamen, Marines, and Soldiers Order; Navy and Army Fund Regulations.)

In the case of any man discharged during the present war, or within a prescribed period after its conclusion, it is not necessary to prove that his state of health bars him from admission to an approved society, nor to make application within any prescribed time, if a certificate is obtained from the Admiralty or Army Council to the effect that he is suffering from any disease, disablement, or bodily or mental unfitness. But where the Commissioners think that a man's state of health does not disqualify him for admission to an approved society they may within six months of his discharge require him to prove that it does (Section 1, N.I. (Navy and Army) Act, 1914 (session 2)).

A man receiving benefits out of the Navy and Army Insurance Fund is not liable to have his benefits reduced by reason of his having a pension. But a man who is in arrears with his contributions, or who entered into insurance at the age of seventeen or over, will have his sickness benefit reduced as in ordinary cases of insurance (see pp. 180 and 200).

In the event of his becoming a member of an approved society a transfer value will be carried over from the Navy and Army Insurance Fund to the approved society (Section 46 (3), Proviso, N.I.A., 1911).

On discharge the provisions of Section 46, N.I.A., 1911, cease to apply to a member of an approved society, and he becomes entitled to the ordinary benefits of the Act.

The term discharge includes transfer to the reserve on

completion of any term of service (Section 46 (2), (5), N.I.A., 1911; Circular A.S. 155).

Men of the Naval Reserves, Army Reserve, and the Territorial Force while being trained and in receipt of public pay are to be regarded as employed within the meaning of the Act and as being in the sole employment of the Crown. They therefore come under the ordinary provisions of the Act and not under Section 46. But men who were not insured persons immediately before training do not, as a rule, become insured during training (Section 46 (8), N.I.A., 1911, and Reserves and Territorial Force Training Order).

Where a man on his discharge receives a pension in respect of total disablement suffered in consequence of the war, any sickness or disablement benefit he may be entitled to will, after a prescribed time, be reduced by 5s. per week. The society, insurance committee, or other body administering benefits may, pending the settlement of his claim for a pension, pay him benefit at the full rate, but will be entitled to have refunded such amount as has been paid in excess of the sums due (Section 1, N.I. (Part I, Amendment) Act, 1915); see also Circular A.S. 163. This provision does not affect the ordinary naval or military pension for long service (see Section 46 (3) (h), Proviso (i)).

As to men in the Army Reserves, the New Armies and the Territorial Forces, who during the present war become employed in civil employment, see Navy and Army Regulations and Circular A.S. 169.

Persons who receive Wages during Sickness.—In certain classes of employment, named in special orders of the Commissioners, it is the custom for employees to receive full pay during sickness. In any such case an arrangement is possible whereby, in consideration of the payment of full wages during sickness, the contributions are reduced. The method of procedure is as follows—

1. The employer who employs persons in a class of employment which has been specified in a special order is entitled, though not bound, to give notice to the

Commissioners that he desires to avail himself of the system of reduced contributions.

2. On giving the notice he becomes liable to pay full wages to all his employees of the specified class during a period or periods (not exceeding six weeks per year in the aggregate) during which they may be suffering from any disease or disablement. If the sickness, etc., begins while the person is in his employment it is immaterial whether he leaves the employment or not before the six weeks expire.

3. If the term of employment is for not less than six months certain, the employer's liability ends when the contract ends, but while the contract is running he is liable to pay full wages for each and every period of illness up to six weeks, notwithstanding that the aggregate may exceed six weeks.

4. The reduction of contributions is, for the employee, 1*d.* per week whether male or female; for the employer, 1*d.* per week for male employees and $\frac{1}{2}$ *d.* per week for females. Contributions will not be payable while the employee is receiving full wages in lieu of benefit if due notice is given.

5. In any period of sickness, etc., during which full wages are paid, no benefit is payable, but when it does become payable it will be deemed to have been already paid for six weeks.

Where a person has left the special class of employment, and is either temporarily unemployed, or becomes a voluntary contributor at the employed rate, the total employed rate will continue to be reduced by 2*d.* ($1\frac{1}{2}$ *d.* in the case of a woman). Such a person will not be entitled to sickness benefit during the first six weeks of any illness which may supervene, but for the purpose of calculating its rate and duration in the future it will be deemed to have been paid during those six weeks, and an illness will, for the purposes of benefit, be deemed to be a continuation of a previous illness only if the doctor certifies it to be so.

6. An insured person who is receiving full pay in lieu of sickness benefit may be made subject to the rules of

the approved society or insurance committee relating to notices and proof of disease, etc. (Section 47 (1), (2), (3), (4), (5), (6), N.I.A., 1911; see also various Special Customs Orders, Special Customs Notice Regulations, Circular X 6, and Circular A.S. 129).

Employers who wish to bring any class of employees within the section may apply to the Commissioners for a special order to be made respecting them. The Commissioners before making the order must ascertain the wishes of the employees (Section 47 (7), N.I.A., 1911; and Special Employers' Customs Consolidated Order).

An employer who has brought himself and his employees within the section may withdraw on giving three months' notice, to terminate at the end of a calendar year (Section 47 (10), N.I.A., 1911).

The section does not apply to any employee whose rate of pay is less than 10s. a week (Section 47 (11), N.I.A., 1911).

The provisions of Section 47 apply to servants of the Crown in cases where two-thirds only of the full remuneration are payable during sickness if it is payable for not less than three months in the year. (Section 53 (2), N.I.A., 1911; see Special Customs Order relating to servants of the Crown, also Circular A.S. 129.)

As the effect of bringing employees within the scope of Section 47, N.I.A. 1911 is to make it difficult or impossible for them to take advantage of the superannuation schemes under Section 13 (see pp. 181–182 above), employers should not, without very careful consideration, claim the privileges of the section (see Memorandum and Report on Substituted Benefits under Section 13; Cd. 6292 (1912) and Form X 46).

Merchant Sailors.—Members of the Mercantile Marine, who are governed by the special provisions of Section 48, N.I.A., 1911, include masters, seamen, and apprentices both in the sea service and in the sea-fishing service.

A member of the mercantile marine is not entitled to sickness, disablement or medical benefit for any period during which the owner is bound under the Merchant Shipping Acts to provide maintenance and medical care,

etc. (see p. 29 above). But sickness benefit shall be deemed to have been paid during this period for the purposes of calculating the rate and duration of it in future cases. Where any such person is serving in a home-trade ship and has dependents, sickness benefit may be paid wholly or in part for their relief or maintenance (Section 23 (1), N.I.A., 1913; see also Circular A.S. 129).

Societies having foreign-going Mercantile Marine Members may claim a rebate on the sums payable to Insurance Committees for medical benefit (Circular $\frac{157 \text{ M.}}{\text{A.G.D.}}$).

In the case of seamen, etc., serving in foreign-going ships or ships engaged in regular trade on foreign stations, the employer's contributions will be reduced by 1*d.* per week, while four employee's contributions will count as five. The employer's fifth contribution in every five weeks is not to be counted in reckoning the employee's arrears.

Two-fifths of the total contributions paid in respect of each seaman, etc., will be credited to his approved society, or to his account in the Deposit Contributors' Fund (as the case may be). Moreover, a sum equal to two-ninths of the sum thus credited will, in addition, be added yearly by the State as its contribution to benefits. (Section 48 (1), (2), N.I.A., 1911; Section 23 (1), N.I.A., 1913; Mercantile Marine Collection of Contributions Regulations, Circular $\frac{157 \text{ M.}}{\text{A.G.D.}}$.)

Members of the mercantile marine may either join an ordinary approved society, or become deposit contributors, or join the Seamen's National Insurance Society. This is an approved society established by the Board of Trade, and is managed by a committee comprising representatives of the Board of Trade, the shipowners, and members of the society in equal proportions. In addition to the ordinary benefits, the society administers under a special scheme other benefits, including long service pensions. Members of this society are entitled to continue in membership after leaving the sea-service if the state of their health bars them from admission into other societies.

The society may also admit voluntary contributors. Any person who, at the commencement of the Act, was a member of a society which became an approved society may, if the two societies agree, join the Seamen's National Insurance Society for the purposes of the pension only, and continue as a member of his old society for the other benefits, the contributions being apportioned between the two societies. Members of the Seamen's National Insurance Society are to be deemed to reside in England, and the society and not the Insurance Committees will administer medical and sanatorium benefit, though it may agree with Insurance Committees for the administering of these benefits in relation to individual members. (Section 48 (4), (5), (7), (8), (9), (12), N.I.A., 1911; Section 23 (2), N.I.A., 1913; Circular A.S. 67; Seamen's Medical and Sanatorium Benefit Regulations; Seamen's Medical Benefit Regulations.)

Seamen, etc., not domiciled nor having a place of residence in the United Kingdom are not insurable. Nevertheless the employer must pay the employer's share of the contributions in respect of them unless the ship is engaged in regular trade on foreign stations. All such contributions are to be credited to the Seamen's National Insurance Society which must, however, devote a portion of the money thus raised, towards providing pensions and superannuation allowances to seafaring members of other societies (Section 48 (3), (6), (7) (a), N.I.A., 1911).

As to the meaning of "master," "seaman," "foreign-going ships," "home-trade ships," "ships engaged in regular trade on foreign stations," see Section 48 (10), N.I.A., 1911 and Section 742, Merchant Shipping Act, 1894.

As to seamen, etc., residing in Ireland, see Section 48 (11), N.I.A., 1911.

Married Women.—Where an insured woman marries and ceases to be employed she is suspended from ordinary benefits.¹ If, however, she subsequently becomes employed again while her husband is still living, she will enter

¹ She, however, continues to be a member of the society. (Section 79, N.I.A., 1911.)

into insurance again as though she had not been previously employed. If she continues to be employed after her marriage she remains an ordinary insured person so long as she is so employed.

In the case of every woman member of an approved society who, on marriage, ceases to be employed, one-third of her transfer value is carried to a separate account, called the married women's suspense account. If, at any time after her husband's death, she becomes employed she will resume her position as an insured person and the period from her marriage to one month after her husband's death will be disregarded for the purpose of reckoning arrears. A reserve value will be transferred from the married women's suspense account to the society. (Section 44 (1), N.I.A., 1911, see also Married Women Consolidated Regulations; Table of Reserve Values Regulation; Circular A.S. 95.)

A woman member of an approved society who, on marriage, ceases to be employed may, within one month (or longer if the society allows it), become a special voluntary contributor. A special voluntary contributor differs from an ordinary contributor in the following respects: (1) It is not necessary for her to be engaged in a regular occupation; (2) the weekly contribution is 3d. (3) Though entitled to medical benefit in the ordinary way, she is not entitled to maternity or sanatorium benefit; sickness benefit is reduced to 5s. for the first thirteen weeks and to 3s. for the second thirteen weeks, while disablement benefit is only 3s. (Section 44 (2), Schedule IV, Part I, Table D, N.I.A., 1911).

A married woman who does not choose to become a special voluntary contributor is entitled to a kind of maternity benefit consisting of a payment of 5s. a week for not more than four weeks during confinement. A married woman deposit contributor who, on marriage, has ceased to be employed is entitled to the same benefits. In both cases the approved society or insurance committee have also a discretionary power to make payments during any period of sickness or distress. (Section 44 (2), Proviso, (4), Schedule

IV, Part III, N.I.A., 1911; see also Married Women Consolidated Regulations.)

A married woman who is a member of an approved society and has ceased to be employed on marriage may have two courses open to her if widowed: (1) She may become an ordinary voluntary contributor (if qualified) at the rate which would have been payable had she become a voluntary contributor on her entry into insurance; (2) she may, whether qualified to be an ordinary voluntary contributor or not, be a special voluntary contributor. In either case the choice must be made within one month of the husband's death (Section 44 (3), N.I.A., 1911).

Should a woman who is a special voluntary contributor become employed within the meaning of the Act, she may obtain from her society a certificate exempting her from becoming an employed contributor, and may continue to be a special voluntary contributor. Her contributions at the special rate of 3*d.* per week will, however, now be paid by the employer, who may deduct it from her wages. The employer must also pay the employer's contributions, and these will be applied for the woman's benefit as the society may determine (Section 44 (8), N.I.A., 1911; see also Married Women, Consolidated Regulations).

No married woman can be an ordinary voluntary contributor; and an unmarried woman who is an ordinary voluntary contributor cannot continue to be such after marriage.

The term "unmarried woman" includes widows as well as spinsters and, for the purposes of the Act, any woman whose marriage has been dissolved or annulled, or who has been separated from or deserted by her husband for two years (Section 44 (7), (14), N.I.A., 1911).

If a woman who was married when the Act came into force subsequently (either before her husband's death or within one year after) becomes an employed contributor and a member of an approved society, she will be entitled to full benefits. Section 9 (4) does not apply in such a case (Section 44 (5), N.I.A., 1911).

As to reduced rate of sickness benefit and reserve value

of any such woman who becomes an employed contributor more than a year after her husband's death, see Table of March 18, 1913.

Should a married woman (whether an employed contributor or a special voluntary contributor) fall into arrears with her contributions, these will all be disregarded in the event of her becoming a widow (Section 44 (6), N.I.A., 1911).

It is the duty of an approved society to supply married women and widowed members and the widows of insured persons with information as to their rights and options under the Act (see Circular A.S. 81, and Forms A.S. 48, A.S. 48A, A.S. 49, A.S. 49A, A.S. 50).

Aliens.—Aliens of the age of seventeen and upwards are within the scope of the Act, but their position is modified as follows—

No State contribution of two-ninths or one-quarter is made in respect of the cost of their benefits. Sickness, disablement and maternity benefits are, as respects deposit contributors, reduced to seven-ninths of the ordinary rate for men and three-quarters for women. As respects members of approved societies the rate of these benefits is within the discretion of the society, but no reserve values will be credited in respect of them. The Commissioners have issued a table of suitable benefits as a guide (see Table G and Circulars A.S. 23 and 146).

There is one exception in favour of women of British nationality who marry aliens. The maternity benefit in respect of their husband's insurance is to be increased by two-sevenths, such increase to be paid by the State. The increased benefit is not, however, to exceed 30s. (Aliens' Maternity Benefit Regulations, 1914).

The following classes of aliens are on the same footing as British subjects—

1. Persons under the age of seventeen.
2. Persons who, on May 4, 1911, had been living in this country for at least five years and were members of societies which have become approved societies.
3. Persons transferred to an approved society or to the

deposit contributors' fund in pursuance of any arrangement with any foreign government.

4. An insured woman married to an alien will not, if she was a British subject before marriage, be regarded as an alien for the purposes of National Insurance (Sections 45 and 32, N.I.A., 1911; Sections 20 and 21, N.I.A., 1913; Circular A.S. 90).

As to the position of alien enemies, see Circular A.S. 153.

Inmates of Institutions.—Certificates of exemption may be granted in respect of the inmates of institutions carried on for charitable and reformatory purposes if they receive maintenance and medical attendance when sick. The exemptions apply to those who are inmates for charitable and reformatory purposes, and not, of course, to members of the staff and others. It is a condition of such exemption that the managers shall, when any inmate of more than six months' standing leaves the institution, make such payments as will enable him to enter or re-enter insurance on favourable terms. Where a certificate of exemption has been granted to the institution the insured person is suspended from benefits under the Act while he is an inmate of the institution, and if he has been an inmate for more than six months no arrears will be reckoned against him for the period of his stay there. (Section 51, N.I.A., 1911, and Section 24, N.I.A., 1913; Value of Contributions Exempted Institution Regulations.)

Deposit Contributors.—The provisions as to Deposit Contributors were originally only intended as a temporary expedient and were to cease to operate at the end of 1914.¹

A deposit contributor is—

(1) An employed contributor who has not joined an approved society within three months and fourteen days from entry into insurance. In the case of seamen, etc., on foreign-going ships, or ships engaged in regular trade on foreign stations, the time runs from the termination of the first voyage after entry into insurance; or—

(2) Any insured person who, having been a member of

¹ They have since been continued under the Expiring Laws Continuance Acts.

an approved society, has been expelled, or has resigned, and has not joined another society within three months; or—

(3) Any voluntary contributor who does not join an approved society on or before entry into insurance. (Section 42, N.I.A., 1911, and Time for Joining an Approved Society Regulations.)

The contributions of the deposit contributor are paid into a special fund, the Deposit Contributors Fund. Out of this fund seven-ninths of the cost of benefits are paid, while two-ninths are paid by the State (for women the fractions are three-quarters and one-quarter). When the fund is exhausted benefits cease, though the Insurance Committee has a discretionary power to continue medical and sanatorium benefit to the end of the year or, in certain cases, beyond that period.

On the death of a deposit contributor four-sevenths (one-half in the case of a woman) of the amount standing to his credit will be payable to his nominee or other person entitled. A deposit contributor who has ceased to live in the United Kingdom is entitled to have the same proportion refunded. (Section 42, N.I.A., 1911, and Section 36, N.I.A., 1913; see also Deposit Contributors Benefits Order; Deposit Contributors Payment on Death Regulations.)

No reserve value is credited to a deposit contributor (Section 55, N.I.A., 1911).

In the event of a member of an approved society becoming a deposit contributor his transfer value, less his outstanding reserve value, is carried to his account in the Deposit Contributors Fund. The outstanding reserve value is cancelled, unless it exceeds the transfer value, in which case a portion of the reserve value equal to the transfer value is cancelled.

Should a deposit contributor join an approved society the amount standing to his credit in the Deposit Contributors Fund, or the value of his contributions, whichever sum shall be the less, will be transferred to the society. Where the amount standing to his credit is the lesser sum, he will be treated as being in arrears to the extent of the deficiency. (Section 43, N.I.A. 1911; see also Deposit Contributors Adjustment of Accounts Regulations; Transfer

of Deposit Contributors Orders; Outstanding Reserve Values Orders.)

INSURANCE COMMITTEES

In every administrative county and county borough there is an Insurance Committee whose principal functions are as follows—

1. The administration of medical and sanatorium benefit for all classes of insured persons, except, in certain cases, persons belonging to the mercantile marine.

2. The administration of other benefits for deposit contributors, and, in certain cases, for naval and military men entitled to benefits out of the Navy and Army Insurance Fund.

3. The making of reports on the health of insured persons.

4. The provision of lectures and the publication of information on health questions.

The number of members on insurance committees varies from forty to eighty. Of these three-fifths are the representatives of the insured persons; one-fifth are appointed by the county or county borough council, two at least being women; two members are elected by the doctors; one, two, or three (according to the size of the committee) doctors are appointed by the council of the county or county borough; the remaining members are appointed by the Insurance Commissioners, two at least being women and one a doctor. The representation of insured persons may be diminished and that of the county council increased if the latter body is required to contribute to the cost of medical or sanatorium benefit under Sections 15 (7) and (8), 17 (2), and (3), N.I.A., 1911.

Except where the Commissioners consider it unnecessary there are district insurance committees for each borough with not less than 10,000 inhabitants, for each urban district with not less than 20,000 inhabitants, and for rural areas as may be arranged.

(Sections 59 and 60, N.I.A., 1911, Section 30, N.I.A., 1913, Memo $\frac{102}{I.C.}$; Representation of Approved Societies

Order; Insurance Committees Representation of Insured Persons Regulations; Medical Benefit Regulations 1913.)

As to the sources of income of insurance committees see Sections 61, 15 (6), (7), (8), 16 (2), 17 (2) (3), 22, N.I.A., 1911; Section 31, N.I.A., 1913; Memo $\frac{102}{I.C.}$; Payments to Insurance Committee Regulations.

Where a local medical committee has been formed representative of the doctors of the county, or county borough, or area possessing a district insurance committee, it is the duty of the insurance committee to consult it on all matters connected with the administration of medical benefit. Similarly there must be formed local committees representative of persons, firms, etc., supplying medicines, drugs, etc., to insured persons. The insurance committees are bound to consult these bodies on all general questions affecting the supply of drugs, etc. (Section 62, N.I.A., 1911; Sections 32 and 33, N.I.A., 1913; Medical Benefit Regulations, 1913; Panel Committees Regulations; Pharmaceutical Committee Regulations, Circular $\frac{44}{I.C.}$, Memo $\frac{194}{I.C.}$, and various Model Schemes.)

Travelling expenses, together with subsistence allowance and compensation for loss of remunerative time may be paid by insurance committees to their members. (Section 61 (2), N.I.A., 1911; Section 31, N.I.A., 1913.)

QUESTIONS AND DISPUTES

As to determination of questions and settlement of disputes, see Sections 66, 67, 27 (1) (b), N.I.A., 1911; 27, N.I.A., 1913; Decision of Questions Regulations; Appeals and Disputes Regulations; and Willis' *National Health Insurance through Approved Societies*.

OFFENCES

Offences against the Act, the failure of an employer to pay contributions, and unlawful receipt of benefit, are dealt with in Sections 69, 70 and 71, N.I.A., 1911; Section 34, N.I.A., 1913.

CHAPTER VII

UNEMPLOYMENT INSURANCE

THE provisions for unemployment insurance are two-fold—

1. In certain specified trades, known as “insured trades” the State undertakes the arrangements for insurance.

2. In any trade, whether an “insured trade” or not, if an association provides unemployment insurance, the State repays to the association a part of the cost of such insurance.

STATE INSURANCE OF WORKMEN IN INSURED TRADES

Insured Trades.—These are enumerated in Schedule VI of the N.I.A., 1911, and are as follows—

1. Building; that is to say, the construction, alteration, repair, decoration, or demolition of buildings, including the manufacture of any fittings of wood of a kind commonly made in builders’ workshops or yards.

2. Construction of works; that is to say, the construction, reconstruction, or alteration of railroads, docks, harbours, canals, embankments, bridges, piers, or other works of construction.

3. Shipbuilding; that is to say, the construction, alteration, repair, or decoration of ships, boats or other craft by persons not being usually members of a ship’s crew, including the manufacture of any fittings of wood of a kind commonly made in a shipbuilding yard.

4. Mechanical engineering, including the manufacture of ordnance and firearms.

5. Ironfounding, whether included under the foregoing headings or not.

6. Construction of vehicles; that is to say, the construction, repair, or decoration of vehicles.

7. Saw-milling (including machine woodwork) carried on in connection with any other insured trade or of a kind commonly so carried on.

A workman in a rural neighbourhood who is employed in an insured trade only occasionally is not insurable unless he and his employer have agreed that contributions shall be paid (Section 97, N.I.A., 1911).

Temporary relief work under the Unemployed Workmen Act, 1905, will not be regarded as employment in an insured trade (Section 107 (1), N.I.A., 1911).

A workman who is employed under the same employer partly in an insured trade, and partly not in an insured trade may, if his employer consents, be treated as if he were wholly employed in an insured trade. (Section 91 (1) (a), N.I.A., 1911; Unemployment Insurance Regulations 1912, Section 35.)

A workman who is employed abroad in an insured trade on work connected with the present war may continue in insurance if he and his employer agree that the payment of contributions shall continue. This provision will remain in force during the war and for one year after. (Section 1 N.I. (Part II, Amendment) Act, 1915.)

The Board of Trade may, where it is desirable, by special order exclude from insurance the following "subsidiary occupations"—

(a) Any occupation which is common to insured and uninsured trades alike, and ancillary only to the purposes of an insured trade.

(b) Any occupation concerned with the making of parts or the preparation of materials for use in an insured trade, but which is mainly carried on as a separate business or in connection with uninsured trades.

Any workman in respect of whom less than ten contributions have been paid, and who, by reason of the excluding order, has ceased to be employed in an insured trade, is entitled to have repaid the contributions paid by him whilst employed in the occupation so excluded,

any benefit he may have received being deducted. Application for repayment must be made within six months of the making of the order. Should the workman subsequently become entitled to benefit he will be treated as if no contributions had been paid whilst he was employed in the excluded occupation. (Section 104, N.I.A., 1911; Section 12, N.I. (Part II, Amendment) Act, 1914; see various Special Exclusion Orders.)

A member of the Army or Navy Reserve or of the Territorial Force who is a workman in an insured trade will, while under training and in receipt of Government pay, be deemed to be employed by the Crown in an insured trade. The unemployment contributions paid by the Crown will, for the purpose of reckoning the sum to be refunded to the employer under Section 5, N.I.A. (Part II, Amendment) Act, 1914, be deemed to have been paid by the employer who employed the man immediately before the training (Section 98, N.I.A., 1911; Section 5 (3) (b), N.I. (Part II, Amendment) Act, 1914).

If a question arises as to whether a workman is employed in an insured trade, regard will be had to the nature of the workman's work rather than to the business of the employer (Section 107 (2), N.I.A., 1911).

To be eligible for unemployment insurance a member of an insured trade must be a "workman," *i. e.* must be not less than sixteen years of age, must be employed under a contract of service, and his work must be wholly or mainly manual labour. An indentured apprentice is not insurable. (Sections 84 and 107, N.I.A., 1911.)

Workmen employed by local or other public authorities are included, as are also workmen employed by the Crown, except where they are serving in an established capacity in the permanent service of the Crown. And any class of workmen who, by reason of their right to a pension, or other terms of service, are in as permanent a position as persons serving the Crown in an established capacity, may be exempt from unemployment insurance. (Section 107 (3), (4), N.I.A., 1911 and Section 15 (1), N.I. (Part II, Amendment) Act, 1914.)

Orders in Council of June 24, 1912, have adapted the Unemployment Insurance Regulations to workmen employed in the service of the Army Council and of the Admiralty. The orders relate to insurance books, stamping and similar matters.

The Board of Trade is empowered to extend, after due inquiry, the scheme of unemployment insurance so as to bring within it any other trade, and also to vary the definition of "workman" as regards age. (Section 103, N.I.A., 1911; Sections 10 and 11, N.I. (Part II, Amendment) Act, 1914; as to procedure at such an inquiry see Special Extension Order Rules, 1914.)

The Right to Benefit.—A workman in an insured trade is entitled to State unemployment benefit only if the following "statutory conditions" are satisfied—

1. Not less than ten contributions have been paid by him.
2. He has made application for unemployment benefit in the prescribed manner, and proves that since the date of the application he has been continuously unemployed.
3. He is capable of work but unable to obtain suitable employment.
4. He has not exhausted his right to unemployment benefit.

But he does not forfeit his right to benefit by declining—

(a) an offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute; or—

(b) an offer of employment in the district where he was last ordinarily employed at a rate of wage lower, or on conditions less favourable, than those which he habitually obtained in his usual employment in that district, or would have obtained had he continued to be so employed; or—

(c) an offer of employment in any other district at a rate of wage lower or on conditions less favourable than those generally observed in such district by agreement between associations of employers and of workmen, or, failing any such agreement, than those generally recognised in such district by good employers.

(Section 86, N.I.A., 1911 and Section 1(1) N.I. (Part II, Amendment) Act, 1914.)

Unemployment benefit is not payable in respect of unemployment which is due to a stoppage of work caused by a trade dispute at the place where the workman is employed. But if, during such a stoppage, he becomes *bona fide* employed elsewhere in an insured trade, and subsequently becomes unemployed again he will be entitled to benefit. The definition of trade dispute contained in Section 107, N.I.A., 1911, is substantially the same as that of the Trade Disputes Act. (See p. 92 above.)

A workman who loses his employment through misconduct, or who voluntarily leaves his employment without just cause, is disqualified for unemployment benefit for six weeks.

A workman is disqualified for unemployment benefit while he is an inmate of a workhouse, prison, or other public institution; or while he is resident outside the United Kingdom; or while he is receiving sickness or disablement benefit or a disablement allowance under the National Health Insurance Scheme (Section 87, N.I.A., 1911).

A workman in an insured trade who repeatedly fails to obtain or to keep employment may be required to undergo a test as to his skill or knowledge. If the test reveals any defects in the workman's skill or knowledge suitable technical instruction may be provided for him. If the effect of such instruction is likely to lessen the workman's calls on the unemployment fund, the expense of providing it may be met out of the fund. (Section 100, N.I.A., 1911.)

CONTRIBUTIONS

The unemployment contribution is at the rate of *5d.* per week, the employer and workman each paying one-half. In the case of a workman under eighteen the contribution is *2d.*, employer and workman paying *1d.* each; but in reckoning the number of contributions paid *1d.* will be treated as two-fifths of a contribution, except as regards the payment of unemployment benefit before he reaches the age of eighteen, or as regards the fulfilment of the first statutory condition (see p. 237 above) for the receipt of benefit.

Where a workman has only worked on one day in the week the employer and workman pay 1*d.* each; if he has only worked on two days they pay 2*d.* each. These reduced contributions will, for the purpose of reckoning the number of contributions, be treated as two-fifths and four-fifths of a contribution respectively.

If more than two days' work is done in the week the full contribution is payable.

No contribution is payable in respect of any period of employment for which no remuneration is paid by the employer, and for the purposes of contributions such period will not be considered a period of employment.

As a rule it is the employer's duty to pay the whole amount of the contribution, but he is entitled to recover the workman's share by deducting it from wages or other payments. The deduction for any period will, as a rule, be made from the wages or other payment for the same period. It is, however, permissible to deduct the contributions for a certain period from the wages, etc., of a part of that period; but the end of the wage period must not be later than four weeks after the end of the contribution period. An agreement by the workman to allow the employer to recover or deduct from wages the whole amount of the contribution is not binding. (Sections 85 and 107, and Schedule VIII, N.I.A., 1911; Section 1 (2) and 9, N.I. (Part II, Amendment) Act, 1914; see also Unemployment Insurance Regulations.¹)

Any contributions paid in error, in the belief that a work-

¹ *Sub-contractors and Piecemasters.*—Where a workman in an insured trade is employed by his own employer (the "immediate employer") in doing work for another person (the "substantial employer"), the latter is deemed to be the employer for the purposes of performing the duties required by the Act. He is, however, entitled to deduct the workman's share of contributions from any sums payable to the immediate employer, and the immediate employer may, in turn, deduct them from the workman's wages. But in the building trade, and in works of construction, where the substantial employer has not an exclusive right to the services of the immediate employer, the immediate employer will be regarded as the employer of the workman. (See Unemployment Insurance Regulations, 1912, Section 36, and the Board of Trade Direction of July 2, 1912.) The regulation only applies to immediate employers who themselves do manual work.

man belongs to an insured trade, are returnable to the employer and workman, any sums paid as benefit being deducted from the workman's contributions. (Section 100 (2), N.I.A., 1911; Section 4 (1), N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Regulations 1912, Section 31.)

Where there is exceptional unemployment in any trade or branch of a trade the payment both of employers' and workmen's contributions may be excused in the case of workmen who are systematically working short time. But any contributions thus excused will, for the purpose of reckoning the sum to be refunded to the employer under Section 5, N.I. (Part II, Amendment) Act, 1914, be deemed to have been paid. (Sections 7 (1) and 5 (3) (a), N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Short Time Regulations.)

Where the Board of Trade exercises its power to extend insurance to other trades, or to vary the definition of workman, it may reduce but not increase the rate of contribution, the equality between the employer's and the workman's share being maintained.

As regards the ordinary "insured trades" the Board of Trade may, at any time after the Act has been in force seven years, revise the rates of contribution for any particular trade or any particular branch of a trade, prescribing, if necessary, different rates for different trades or branches. But the increase of the total contribution must not exceed 2*d.*, and the employer's and the workman's share must remain equal. Any revision when made holds good for seven years. (Sections 103 and 102, N.I.A., 1911.)

Should it be necessary for the Treasury to advance money for the purpose of discharging the liabilities of the unemployment fund, and, before such advance is repaid, the unemployment fund is found to be insolvent, the rates of contribution may be temporarily increased by not more than 2*d.*, employer and workman bearing the increase equally (Section 93 (2), N.I.A., 1911.)

All contributions are paid into a fund called the Unem-

ployment Fund, controlled and managed by the Board of Trade. Into this fund the State pays yearly a sum equal to one-third of the total amount of contributions (Sections 92 and 85 (6), N.I.A., 1911 and Section 4, N.I. (Part II, Amendment) Act, 1914). In the event of the unemployment fund being insufficient to meet the claims made upon it the Treasury may advance such sums, not exceeding three million pounds in the aggregate, as are necessary to discharge the liabilities of the fund. (Section 93 (1), N.I.A., 1911; as to other financial provisions see Sections 92 and 93, N.I.A., 1911 and Section 4 (1), N.I. (Part II, Amendment) Act, 1914.)

Refund of Contributions.—The employer is entitled to a refund of 3s. for each workman for whom he has paid at least forty-five contributions during the insurance year. Application for the refunding of this money must be made within two months after the end of the insurance year. In calculating the number of contributions paid by the employer any contributions excused under Section 7 (1), N.I. (Part II, Amendment) Act, 1914, or paid under Sections 98 or 99 N.I.A., 1911, will be taken as paid; but if, apart from such contributions, the number of contributions paid in the year is less than forty-five, the amount refunded will be reduced. (Section 5 N.I. (Part II, Amendment) Act, 1914; Refunds to Employers Regulations 1915.)

A workman who has reached the age of sixty and has paid contributions for five hundred weeks or more, but has received in benefit less than he has paid, is entitled to be repaid the difference between benefits received and contributions paid by him, together with compound interest at two and a half per cent. In the event of his death after reaching the age of sixty his personal representatives are entitled to the money.

If the workman was over fifty-five when contributions first became payable, the number of weeks for which contributions must have been paid will be reduced by fifty for every year or part of a year by which his age exceeds fifty-five.

Where any such repayment has been made the workman's liability to pay contributions continues, and should he afterwards become entitled to benefit he will be treated as having paid five-eighths (or the nearest full number of contributions) of the number of contributions actually paid during the period for which repayment has been made.

When the number of contributions paid after such repayment has reached one hundred, a further repayment will be made. In the event of the workman's death his representatives may claim the repayment whether one hundred additional contributions have been paid or not. (Section 95, N.I.A., 1911; Section 6, N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance, Calculation of Interest Regulations, 1915.)

In the case of workmen engaged through a labour exchange, and in trades where casual labour is extensively employed, an employer may arrange that the labour exchange shall perform all or any of his duties under the Act. Under such an arrangement different periods of employment of the same workmen or different workmen may, for the purpose of the employer's contributions (but not for the purposes of a refund of any part of the employer's contributions), be treated as a continuous employment of a single workman. In computing the sum to be refunded to an employer under Section 5, N.I. (Part II, Amendment) Act, 1914, he will be deemed to have paid the number of contributions which he would have been liable to pay if he had not made the arrangement.

Where a workman engaged through a labour exchange has been employed by one or more employers who have made such an arrangement as above, his periods of employment under these employers may be treated as one continuous period of employment under one employer. (Section 99, N.I.A., 1911; Section 5 (3) (c), N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Regulations (1912), Sections 32-34; also Regulations of June 25, 1912.)

An employer or workman who fails to pay any con-

tributions due from him is liable to a fine not exceeding £10, and also to pay to the unemployment fund three times the amount of the unpaid contributions not exceeding £5. And any person who fails to comply with any of the requirements of the Act relating to unemployment insurance, or with the regulations, is liable to a fine not exceeding £10. (Section 101, N.I.A., 1911; and Section 8, N.I. (Part II, Amendment) Act, 1914; as to other offences see Section 101, N.I.A., 1911.)

In the event of the bankruptcy of the employer unemployment contributions for a period of four months are with certain other preferential debts,¹ such as wages, rates, taxes and compensation due under the Workmen's Compensation Act, to be paid in priority to all other debts. The same rule holds good where a company is wound up (Section 110, N.I.A., 1911).

UNEMPLOYMENT BENEFIT

The following are the particulars relating to unemployment benefit—

1. The rate is 7s. per week for workmen over eighteen, 3s. 6d. per week for those between seventeen and eighteen, while for those below seventeen no benefit is payable.

2. The right to benefit begins with the second week of the period of unemployment, but two periods of unemployment of not less than two days each separated by a period of not more than two days, during which not more than twenty-four hours' work has been done, are to be treated as a continuous period of unemployment. Similarly, two periods of unemployment of not less than a week each, separated by not more than six weeks are to be treated as a continuous period of unemployment.

The period of unemployment is not deemed to have commenced until the workman has applied for benefit, and any period during which the workman is disqualified for benefit (see p. 238) is not to be reckoned as part of the period of unemployment.

¹ See p. 271 below.

The fact that a workman is unemployed as regards his ordinary work does not render him unemployed within the meaning of the Act if—

(a) he is following a remunerative occupation in some insured trade; or—

(b) he is following any occupation which brings him in more than the amount of unemployment benefit, unless it is an occupation that he has ordinarily followed in addition to his work in the insured trade, and outside working hours in such trade, and the rate of remuneration is not more than £1 a week.

3. Not more than fifteen weeks' benefit is payable in an "insurance year,"¹ nor more than one week's benefit for every five weekly contributions paid. A workman over twenty-one years of age who has habitually worked at an insured trade before July 15, 1912, will be credited with five weekly contributions for each period of three months, or part of such a period, during which he has been so employed. But not more than twenty-five contributions may be thus credited to any one, and where no contributions have been paid in respect of a workman before August 10, 1914, no such additional contributions will be credited to him.²

(Sections 84, 107 and Schedule VII, N.I.A., 1911, Sections 15, 17 and 18, N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Regulations, 1912, Sections 10-13, as amended by Supplementary Regulations 1914 and 1915.)

The Board of Trade may, within certain limits vary the rate of benefit, and the period for which it is payable (Sections 93 and 103, Schedule VII, N.I.A., 1911).

A person entitled to unemployment benefit cannot

¹ An "insurance year" is defined in the Unemployment Insurance (Supplementary) Regulations, 1914, as (1) the period commencing on July 15, 1914, and ending on July 17, 1915; (2) thereafter the period commencing on the day next after the last day of the preceding insurance year, and ending on the Saturday nearest to the 14th day of July in the following calendar year, and so on from year to year.

² Benefit is not payable for less than one day's unemployment.

assign his rights to any other person (Section 111, N.I.A., 1911).

ADMINISTRATION OF UNEMPLOYMENT INSURANCE

The administration of the unemployment insurance scheme is in the hands of the Board of Trade. Disputed claims for benefit and other questions of like nature are determined in the first instance by the insurance officer of the district. Where benefit is refused or stopped, or the full amount claimed is not allowed, the workman may request the insurance officer to refer the question to a court of referees. The insurance officer may also, of his own accord, refer a question to a court of referees. In either case, if he disagrees with the recommendation of the court, he may be requested by the court to refer the matter to the umpire for final decision.

Where a claim for benefit has not been finally settled, but a court of referees recommends that it should be paid pending the decision, the benefit thus paid will not, as a rule, be recoverable if the decision is adverse to the workman.

A court of referees must consist of one or more representatives of employers and an equal number of representatives of workmen, with a chairman appointed by the Board of Trade. It is the duty of the Board to draw up panels of employers' and workmen's representatives respectively for various districts and trades, or groups of trades. The workmen's representatives are elected by the workmen, while the employers' representatives are nominated by the Board of Trade. From them are chosen the members of the courts of referees (Sections 88, 89, 90, 91, N.I.A., 1911, and Sections 2, 3, and 4, N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Regulations 1912, Sections 20-22, as amended by Supplementary Regulations 1914 and 1915; see also Court of Referees Emergency Regulations 1915, and Explanatory Memorandum relating to Courts of Referees issued February 1913).

Administration of State Benefit by Associations.—The State unemployment benefit may, on certain conditions,

be administered by associations of workmen in somewhat the same way that health insurance benefits are administered by approved societies. The conditions under which this may be done are as follows—

1. The Board of Trade, on the application of the society, makes an arrangement with the society whereby the society pays the unemployment benefit in the first instance.

2. The rules of the society must provide for paying to those of its members who are workmen in an insured trade unemployment benefit at a rate which is at least one-third higher than the benefit due from the State.

3. The society will receive periodically from the unemployment fund a sum equal to the aggregate amount which its unemployed members would otherwise have received as State unemployment benefit.

4. The unemployment contributions due under the Act may be treated as if they formed part of the ordinary subscriptions to the society, and the subscriptions may be reduced accordingly without the sanction of the rules.

5. It is not necessary that the association should be composed entirely of workmen, but it must be substantially an association of workmen (Section 105, N.I.A., 1911, Section 13, N.I. (Part II, Amendment) Act, 1914; Unemployment Insurance Regulations 1912, Sections 14–19, as amended by Supplementary Regulations 1915).

STATE ASSISTANCE OF VOLUNTARY INSURANCE

Where an association of persons not trading for profit makes payments to persons whilst unemployed, the Board of Trade may repay such portion as they think fit (not exceeding one-sixth) of the aggregate amount thus expended by the association. In order that the grant may be paid it is not necessary that the persons receiving unemployed pay should be engaged in manual labour, or that they should belong to “insured trades,” nor is it necessary that the association should be an association of workmen. And if a workman in an insured trade, besides receiving the State unemployment benefit, also receives

unemployment pay from such an association, the State will repay a portion of this to the association.

An association of workmen which, by arrangement with the Board of Trade under Section 105, N.I.A., 1911, pays the State benefit, may have repaid to it not merely the amount of the State benefit, but also one-sixth of the difference between the State benefit and the benefit actually paid. Should the rate of total benefit payable be less than 13*s.*, the portion to be excluded before reckoning the fraction one-sixth will not be the whole of the amount paid as State benefit, but such part of it as bears the same proportion to the whole as the rate of total benefit bears to 13*s.*

Thus suppose an association pays unemployment benefit at the rate of 11*s.* per week, 7*s.* being from the State fund, and 4*s.* from the private fund; the amount to be refunded to the association is found as follows—

1. From the total benefit take eleven-thirteenths of the State benefit, *i. e.* 5*s.* 11*d.*, leaving 5*s.* 1*d.*

2. Take one-sixth of the sum thus obtained, *i. e.* 10*d.*

3. To this add the amount of the State benefit of 7*s.*, making 7*s.* 10*d.* in all. (Section 106, N.I.A., 1911; Section 14 (1) (c), N.I. (Part II, Amendment) Act, 1914; Unemployment Regulations, 1912, Sections 27–30.)

Where the rate of benefit paid by an association is such that the private unemployment benefit, or the private and the State benefit together, exceed 17*s.* a week, the portion of the private benefit to be repaid under Section 106, N.I.A., 1911, will be reduced as the Board of Trade may think just (Section 14 (1) (b), N.I. (Part II, Amendment) Act, 1914).

CHAPTER VIII

COMPENSATION IN RESPECT OF INDUSTRIAL ACCIDENTS

WHERE a workman is injured or killed while at work he (or his dependents) may claim damages or compensation in one or more of the following ways—

I.—*Liability of Employer at Common Law and under Lord Campbell's Act.*—Under the common law of this country if A causes injury to B by his negligence or by any wilful act or omission, B may sue him for damages. The action will, as a rule, be tried by a jury, and if the jury order A to pay damages they will order him to pay an amount which seems to them a fair recompense for the injury B has suffered. There is no limit to the amount which a jury may award as damages, so long as it is a reasonable amount.

Formerly, if the injury resulted in death the relatives of the injured person could not claim damages in respect of his death; the right to bring an action was said to die with the person injured. But this rule of law was modified by Lord Campbell's Act in 1846. Under this act if a man is killed by accident certain of his relatives may bring an action for damages if the man himself could have brought one had he been injured only. The relatives who can sue under Lord Campbell's Act are the wife, husband, father, mother, stepfather, stepmother, grandfather, grandmother, child, grandchild and stepchild.

If the person injured or killed is a workman, and if his injury or death has been caused by the wilful act, or negligence, or omission of his employer, the employer is liable to pay damages under the common law or under Lord Campbell's Act. The employer may thus become

liable to pay damages because the premises, plant, machinery, tackle, etc., used in the work are improper or unsafe, or because he has not provided premises, machinery, plant, tackle, etc., which are necessary for the safety of his workmen. He may even become liable because he employs an incompetent servant, if that servant's incompetence causes the injury or death of another servant. And a negligent or defective system of carrying on the work may make the employer liable in damages if an accident happens. The following is a recent case which illustrates this very clearly. A boy employed in a cartridge factory was injured by an explosion. It was proved that the machinery used for loading cartridges was unsuitable and that the employer had neglected to take proper precautions to prevent explosions. The jury awarded one thousand pounds damages.

But an employer sued for damages at common law or under Lord Campbell's Act often escapes liability by setting up the defence of contributory negligence, or of common employment.

Contributory Negligence.—See p. 79.

Common Employment.—The doctrine of Common Employment may be briefly stated to be as follows: If a workman is injured or killed while at work, and the accident is due to the negligence, etc., of a fellow-workman, the employer is not liable to pay damages. This doctrine may often have very harsh results, for all persons employed by one employer are in common employment. Thus, a railway porter, an engine-driver, a station-master and other officials of a railway company are all servants of the company and are in common employment. The result is, that when a servant of a company is injured it is often impossible to fix the common law liability on the employer.

II.—*The Employers' Liability Act 1880.*—Under this Act an injured workman (or his relatives where the accident is fatal) may claim damages if the injury or death has occurred—

1. By reason of any defect in the condition of the ways,

works, machinery, or plant connected with or used in the employer's business.

2. By reason of the negligence of some other person in the employment of the same employer exercising duties of superintendence.

3. By reason of the workman having acted in obedience to orders issued negligently by some other person in the employment of the same employer whom he was bound to obey.

4. By reason of some act or omission of some other person in the employment of the same employer, and done or made in obedience to any rules, by-laws, or particular instructions.

5. By reason of the negligence of some other person in the employment of the same employer who has charge or control of any signal, points, locomotive engine, or train upon a railway.

In an action brought under this Act the defence of common employment cannot be used by the employer. But the defence of contributory negligence is open to him.

III.—*The Workmen's Compensation Act 1906*.—Under this Act any injured workman (or his dependents, in case of death) can recover compensation from the employer, if the accident arises out of and in the course of the employment. The employer cannot protect himself by proving either contributory negligence or common employment; and compensation is recovered under this Act not in a common law action with a jury, but by arbitration proceedings in which usually the County Court judge of the district is the arbitrator.

Choice of Remedies.—In most cases of accident the workman's only remedy is under the Workmen's Compensation Act. Sometimes, however, he will be able to claim under the Employers' Liability Act, and on a very few occasions an action for damages at common law or under Lord Campbell's Act may be successful. It is thus necessary for him to know which is the proper remedy when he is injured. And if more than one remedy is open he should know which is the most effective.

Undoubtedly it is safest and quickest to proceed under the Workmen's Compensation Act, but the amount which can be recovered as compensation is thus limited to £300 in case of death and to £1 a week in case of injury. This is not always a fair recompense to the workman or his dependents for the harm that has been done.

Under the Employers' Liability Act the damages take the form of a lump sum both in case of death and of injury. There is no provision for weekly payments. The sum which may be awarded is limited to an amount equal to three years' earnings. It is clear that such a sum may often exceed £300.

One disadvantage in proceeding under the Employers' Liability Act is that the employer may raise the defence of contributory negligence. This cannot be done if a claim is made under the Workmen's Compensation Act.

Where there is a good chance of succeeding an action at common law is undoubtedly the workman's best remedy, for there is no arbitrary limit to the amount of damages which he may recover. The jury may award him whatever sum seems to them a fair recompense for the injury. The workman (or his dependents in case of death) might therefore obtain much more than £300. But procedure at common law is very slow, and for this reason it may often be advisable to rely on the Employers' Liability Act or the Workmen's Compensation Act, especially if the workman is penniless and destitute. Moreover, at common law the workman is likely to be defeated by the defence of common employment.

If a workman or his dependents claim damages at common law, or under Lord Campbell's Act, or under the Employers' Liability Act, and the claim is unsuccessful, they may claim compensation under the Workmen's Compensation Act. Sub-section 4 of section 1 states the conditions under which this may be done—

1. The action must have been brought within six months after the accident or the workman's death.
2. On the dismissal of the action the court must be

requested to assess compensation under the Workmen's Compensation Act.

3. If compensation is granted the court may deduct from it all or part of the costs which have been caused by bringing the action. The court will also give a certificate stating the compensation awarded, together with directions as to the deduction for costs (see Section 1 (2) (b), and (4), W.C.A.

But a person who has made an unsuccessful claim under the Workmen's Compensation Act cannot, as a rule, begin fresh proceedings at common law or under the Employers' Liability Act.

THE WORKMEN'S COMPENSATION ACT 1906

THE ACCIDENT

In order to be entitled to compensation under the Workmen's Compensation Act the workman must have received a personal injury by accident arising out of and in the course of his employment ¹ (section 1 (1)).

The word *accident* as used in the Act means more than an accident of a violent nature such as the bursting of a boiler, an explosion in a mine, a railway collision, or a fall from a chimney, etc. It may include some mishap to the human frame itself such as the straining of a muscle, or the bursting of a blood-vessel through over-exertion.

In *Fenton v. Thorley* [1903], A.C. 443, a workman ruptured himself while attempting to turn a wheel that had become stiff; in *Thompson v. Ashington Coal Co.* [1901], 84 L.T. 412, a piece of coal worked its way into the flesh of a miner's knee and caused blood-poisoning. In each case it was held that there had been an accident. Even so slight a thing as the entry of a disease germ into a man's eye may be an accident. Thus, in *Brinton v. Turvey* [1905], A.C. 230, a woolsorter while at work became infected by anthrax microbes which entered his eye. This was held to be an accident. A sudden chill caught while working in cold water has been held to be an accident

¹ There is no necessity to prove that the accident is due to the fault of the employer or any other person.

(*Sheeran v. Clayton*, 3 Butterworth 583; see also *Brown v. Watson*, 30 T.L.R. 501).

But where an injury is brought about gradually, as a result of the work which the workman is doing, it is not due to an accident. In *Walker v. Hockney Bros.*, 2 Butterworth 20, a porter had carried out goods on a tricycle for several years. During this time he often complained of pains in the legs and at last one leg became partly paralysed: Held, there had not been an accident. A somewhat similar case was that of a sewerman who contracted enteritis through working constantly in the London sewers. Here, too, it was held that there had been no accident (*Broderick v. London County Council*, 1 Butterworth 219).

But though a disease gradually contracted is not an accident, it is provided by Section 8 of the Act that about a score of the most common industrial diseases are to be treated as accidents and compensation paid accordingly. These diseases are specified in Schedule III of the Act and in Home Office orders. They include anthrax, lead poisoning, phosphorus poisoning, nystagmus, beat-hand, beat-knee, beat-elbow, glanders, ankylostomiasis, etc.¹

Nervous shock caused by an accident has been held to be an injury. In *Pugh v. L. B. & S. C. R. Co.* [1896], 2 Q.B. 248, a signalman just managed to prevent a serious railway accident, but he was so excited and alarmed that when the danger was past he collapsed and was unable to work for some time. In *Yates v. South Kirkby, etc., Colliery*

¹ *Employers may be compelled to insure against Industrial Disease.*—It may happen that, in an industry mentioned in Schedule III, there is an insurance company or society which insures the workmen against the risks of the industry. If a majority of employers in that industry are insured in the society or company, the Home Secretary may order all the other employers in the industry to insure in it also, provided that the society or company consents. The Home Secretary will only make this order on the application of some of the employers or workmen concerned, and the terms and conditions under which the employers join the society or company must be set out in the order.

The primary intention of this sub-section seems to be that the whole of any industry throughout the country should come within the operation of such a scheme. It is, however, permissible to apply this provision to the employers of a locality or of any particular class. (Section 8 (7), W.C.A.)

Co., 3 Butterworth 418, a collier saw a fellow-workman fatally injured and the shock was so great as to completely disable him. In both cases it was held that there had been an accident.

It may happen that a workman is weak or ill and that the accident is, to some extent, due to this cause. This does not, however, destroy the right to compensation. Thus a workman in a starving condition was given a job in the stoke-hold of a ship. Owing to his weak condition he had an attack of heat-stroke while raking out ashes and subsequently died: Held, that compensation must be paid (*Ismay, Imrie & Co. v. Williamson*, 1 Butterworth 232).

Cases sometimes occur where a workman already maimed and partly disabled is again injured, and the two injuries together make him incapable of work. In such cases compensation must usually be paid. In *McEvoy v. Pierce & Co.*, 37 Ir.L.T. 105, a workman who had lost the four fingers of his right hand was still able to work, but several years afterwards he had a second accident by which he lost his left thumb, thus becoming practically helpless: It was held, that the incapacity was due to the second accident and compensation was granted.

If a workman is suffering from some disease and an accident hastens its progress, so as to cause death or incapacity, there is a right to compensation. Thus, a railwayman was suffering from kidney disease which must prove fatal within a few years. An accident happened to him and the shock so lowered his system that the progress of the disease was hastened and he died in a short time. Compensation was granted in this case (*Golder v. Caledonian R. Co.* [1902], 40 Sc.L.R. 89).

There is no right to compensation unless the accident "arises out of and in the course of the employment" (section 1 (1)). An accident arises "out of a workman's employment" if it is one of the ordinary dangers which the workman is exposed to while doing his duty. Thus, if a shuttle flies out of a loom and injures a weaver, that is one of the ordinary dangers of weaving, and the accident

has arisen out of the employment. But if A throws a shuttle at B, and C is hit while weaving, that is not an accident arising out of C's employment as a weaver. An accident does not arise out of the employment unless the employment is such that the workman runs a greater risk of such an accident than ordinary people. Thus, a servant who is sent by her mistress to post a letter runs the same risk of slipping on the pavement as other people, and if she slips on a banana-skin and breaks her leg the accident does not arise out of the employment (see *Sheldon v. Needham*, 30 T.L.R. 590).

An accident arises "in the course of the employment" if it happens while the workman is performing his duty to his employer. Thus, in the above examples the accident to C and to the servant-girl both arise in the course of the employment. If, however, C is skylarking with A and B, or if the servant-girl is going out on an errand of her own, the accident is not in the course of the employment.

The following are cases of accidents which did not arise out of and in the course of the employment:—

A labourer employed in a mine to clear away coal and put it into trucks began to hew coal and while doing so was killed (*Edwards v. International Coal Co.*, 5 Minton-Senhouse 21).

A roadman employed on road repairing work arranged privately with the engineman to come early each morning and attend to the engine fire. His proper work was to sweep and put "blinding" on the road. While attending to the engine fire he was killed (*M'Allan v. Perthshire County Council*, 8 F. 783).

When a workman is injured or killed through disobeying orders his disobedience does not necessarily destroy the right to compensation. If the disobedience is of such a nature that the man is doing something quite outside his ordinary work, the accident does not, as in the two cases just mentioned, arise out of the employment. But if the act of disobedience is an act of the same kind as the acts which are within the scope of his employment, the

accident may be regarded as arising out of the employment. Thus, in *Menzies v. M'Quibban*, 2 F. 732, a workman was sharpening tools on a grindstone when the belt slipped. He had been told not to touch the belt; nevertheless he tried to replace it and was injured. The man's conduct was regarded as a natural and helpful interference with his master's business and compensation was awarded. And generally where a workman in a sudden emergency exceeds his ordinary duties in order to safeguard his employer's interests, any accident which may happen will be said to arise out of and in the course of the employment.

An accident may arise out of and in the course of the employment though it takes place before the work has actually begun or after it is over. If it takes place while the workman is going to or from work it arises out of and in the course of the employment, as a rule, if the man is still on the employer's premises. But he must not be loitering, or taking a forbidden path, or going into unnecessary danger, or going out of his way to transact business of his own. In *Lowry v. Sheffield Coal Co.*, 24 T.L.R. 142, a workman went home from his work and several hours later returned for his wages and was injured while on the employer's premises: Held, that the accident arose out of and in the course of the employment.

If an accident occurs to a workman while he is taking a meal, or a drink, or relieving nature, it arises out of and in the course of the employment, provided that the man is on the employer's premises with the employer's consent, and has not gone into some unreasonable or dangerous place. (See *Blovelt v. Sawyer* [1904], 1 K.B. 271; *Morris v. Mayor of Lambeth*, 22 T.L.R. 22; *Martin v. Lovibond & Co.* [1914], 2 K.B. 227; *Brice v. Lloyd* [1909], 2 K.B. 804; *Hewitt v. Workman, Clark & Co.*, 44 *Irish Law Times and Solicitors' Journal*, p. 83.)

Where a workman is assaulted or murdered while at work the accident does not arise out of and in the course of the employment unless the work is of such a nature as to expose the man to the risk of such assaults. See

Anderson v. Balfour, 3 Butterworth 588—gamekeeper attacked by poachers; *Nisbet v. Raine & Burn*, 3 Butterworth 507—cashier murdered while carrying a large sum of money for payment of wages; *Thorn v. Humm & Co.*, 31 T.L.R. 194—taxi-cab driver, who failed to hear challenge of military sentry, shot while conveying officer to a fort; *Weekes v. Stead*, 30 T.L.R. 586—manslaughter of foreman whose duty it was to employ casual labourers of a rough and violent class given to assaulting foremen who refused them work. In all four cases compensation was granted. In *Mitchinson v. Day Brothers*, 29 T.L.R. 267, the driver of a van was assaulted and fatally injured by a drunken man while in charge of a horse: Held, that the accident did not arise out of the employment.

Rescue Work in Mines.—Workmen engaged in rescue or ambulance work in a coal-mine are within the Act. Workmen in mines who, with the consent of their employers, are being trained as members of a duly authorised rescue brigade are also within the Act (Section 110, C.M.A., 1911).

Serious and Wilful Misconduct.—Where the injury is due to serious and wilful misconduct on the part of the workman, no compensation is payable unless death or serious and permanent disablement occurs, in which cases misconduct is immaterial (section 1 (2) (c)).

The most usual form of serious and wilful misconduct is drunkenness. The defence of serious and wilful misconduct is not often raised by the employer, for any behaviour of the workman which amounts to serious and wilful misconduct usually renders the accident one which does not “arise out of and in the course of the employment.”

AMOUNT OF COMPENSATION

The amount of compensation payable is in accordance with Schedule I of the Act.

Fatal Accidents.—Where the accident is fatal the compensation is reckoned according to the following rules—

1. If the workman has been in the service of the same employer during the three years before the accident, the amount of compensation will be equal to his actual earnings during those three years. But it cannot be more than £300 in any case, nor less than £150.

In *Leonard v. Baird*, 3 F. 890, a miner was killed after he had descended the pit, but before he had actually begun work. His widow received £150.

2. If the workman has not been three years in his employer's service at the time of the accident, his average weekly wages must be found for the period during which he has been employed, and the amount of compensation will be one hundred and fifty-six times that average.

3. Where the workman has no one wholly dependent upon him, but leaves partial dependents, the rule is somewhat different. The amount of compensation must then be "reasonable and proportionate to the injury," but not more than £300. A partial dependent does not necessarily get less than a total dependent would get. The amount depends on the financial loss which the dependents have suffered. The arbitrator decides what this loss is in each particular case, and partial dependents often get the full compensation.

4. Where there is no one dependent on the workman, the compensation must be a sum sufficient to pay the reasonable expenses of medical attendance and burial. But this sum is not to exceed £10.

Non-fatal Accidents.—Where the workman is not killed, but is incapacitated for work, he is entitled to a weekly payment until he recovers. This payment is usually one half of his average weekly earnings. The arbitrator may award less than half, but, except in the special case of minors to be mentioned (p. 262), not more than half.

The average weekly earnings are found by taking the average for the twelve months before the accident. If, at the time of the accident, the workman has not been in the employer's service so long, the average must be taken for the period during which he has been employed. Under no circumstances will more than £1 a week be awarded.

No compensation is payable unless the workman is disabled from earning full wages for at least a week (section 1 (2) (a)). And if the incapacity lasts less than two weeks no compensation is payable in respect of the first week (schedule I, par. 1, proviso (a)).

Average Weekly Earnings.—It will be noticed that the amount of compensation depends on the workman's average weekly earnings in all non-fatal accidents, and in those fatal accidents where the workman has not been in his employer's service for three years. The rules relating to the calculation of average weekly earnings are therefore of great importance.

Where the workman has worked without a break for a number of weeks the average earnings can, of course, be easily obtained, for it is only necessary to divide the total sum earned by the number of weeks. Cases, however, often occur in which a workman has been employed by the same employer for a considerable time, but there have been breaks in the employment. In these cases only the last period is taken into account. Thus, in *Hewlett v. Hepburn & Co.*, 16 T.L.R. 56, a carpenter had been employed by one firm from August 1897 to February 1899, when the accident happened. This man had been ill and away from work from August 18 to September 3, 1898. The County Court judge held that a new employment began on September 3, 1898, and took the average earnings for the period between this date and the date of the accident.¹

A break in the employment is also caused when a workman is changed from one grade to another, as from carter to shepherd on a farm, from ordinary seaman to able-bodied seamen on a ship, or from a bricklayer to a labourer, and so on. In *Babcock and Wilcox v. Young*, 4 Butt 367, a man who was a boilermaker by trade worked for the same employer for four weeks as a boilermaker at 44s. a week, and then for fifteen weeks as a labourer at 20s. per week. He was then injured. It was held

¹ But an illness is not necessarily a break in the employment, especially if it is a short one.

that his employment as a labourer was a different employment from that as a boilermaker, and compensation was fixed at 10s. per week (half his weekly wages as a labourer).

A mere rise or fall in wages does not of necessity denote a change of grade; the workman's rank in the world of labour must have been changed as well as his rate of pay.

A workman's employment may have been interrupted without the interruption being sufficiently serious to amount to a break in the employment. Such interruptions, of course, lower the total earnings for the period, and if they are reckoned as part of the period of employment the total earnings will be divided by a larger number of weeks and so lower the average still further. Thus, suppose a man has been employed for one year, has been absent from work for eight weeks during that period, and has earned £88. If the eight weeks are reckoned as part of the employment we must divide £88 by 52. This will make the average wage £1 13s. 10d. But if the eight weeks are not reckoned, then the £88 will be divided by 44, giving an average wage of £2 per week.

Neither of these methods seems quite fair, and so a method is adopted which makes an allowance for those periods of employment which may be expected to occur every year by reason of holidays, slackness of trade, etc. In the above case let us suppose that five weeks of unemployment were due to ordinary holidays and slackness of trade, and that the other three weeks of absence were due to illness and holidays taken by the man on his own account. We first divide £88 by 44, getting £2. Then as the ordinary working year is not a full year but only 47 weeks, *i. e.* $47/52$ of a year, we take $47/52$ of £2 as the average weekly earnings. This amounts to nearly £1 16s. 2d. (See *Bailey v. Kenworthy* [1908], 1 K.B. 441, *Carter v. Lang* 45 Sc.L.R. 938; *Anslow v. Cannock Chase Colliery Co.* [1909], A.C. 435.)

It may happen that a man is working one part of his time for one employer (earning, say, 15s. per week), and part for another employer (earning, say, 17s. a week).

If he is injured while working for one of these employers and is totally disabled, his earnings in both employments must be taken into account, and the compensation will be 16s. per week (half of 32s.), (schedule I, par. 2 (b)). This rule does not, however, apply in the case of a fatal accident, where the man has been employed for three years by the employer in whose service the accident happened. In such a case only the earnings in the employment in which the accident happens can be taken into account. (See *Busby v. London and India Docks*, 2 Butt 327 and 491.)

In calculating average weekly earnings other things besides actual money wages may be included, *e. g.* food, clothing, tips, etc. Thus, where a ship's steward received a fixed wage and was allowed a profit on the whisky he sold, these profits were included in his earnings. (See *Skailes v. Blue Anchor Line*, 27 T.L.R. 119.)

Closely connected with this is the question whether certain sums shall be deducted from a man's wages in order to find his average weekly earnings. This is not often allowed. Thus, colliery owners frequently deduct from miners' wages small sums for oil, sharpening of picks, gunpowder, payment of checkweighers, etc., etc. But these amounts must be reckoned as part of the wages when compensation is being assessed. (See *Houghton v. Sutton & Lee Green Collieries Co.* [1901], 1 K.B. 93.)

In one case an employer paid an injured workman 14s. 7d. a week for several weeks though he was in fact only entitled to 10s. a week. The employer afterwards wished to hold back further payments in order to recover the amount thus overpaid. But it was held that he must pay the man the proper compensation each week and sue him for the excess payments if he wished to get them. (*Hosegood & Sons v. Wilson*, 27 T.L.R. 88.)

Review of Weekly Payments.—Where an injured workman's condition changes (either for better or worse) so that he appears to be entitled to a smaller or greater weekly payment than that originally agreed upon or fixed by the arbitrator, the amount may be varied

accordingly. If the employer and workman cannot agree as to the new amount, either of them may apply to the arbitrator to end, diminish, or increase the payment as the case may be (Schedule I, par. 16).

Nominal Award.—Where the workman is injured, but is able to go on working earning full wages, he is not, of course, entitled to compensation. But there is a danger that his injuries may afterwards prove to be more serious, and that he may be unable to work. As a safeguard against such a danger a nominal sum of 1*d.* a week should be asked for. This keeps the right to compensation open, and if the injury does prove to be a serious one, the man may apply to have his compensation increased to a substantial amount. An alternative method of keeping alive the right to compensation is to ask the arbitrator to make a declaration of liability against the employer. In cases of slight rupture, injury to eyesight, etc., one or other of these courses should be taken.

Light Work.—If an injured workman partly recovers and is able to do light work, his employer may reduce the amount of compensation, but if the man becomes worse again the payments will have to be increased. It is not, however, always easy to say whether an injured workman is able to do light work. If he has repeatedly tried to get work, but has been refused it because of his disablement, he will, as a rule, be entitled to full compensation. But if his failure is due to slackness of trade he cannot claim full compensation. (See *Clark v. Gas Light & Coke Co.*, 21 T.L.R. 184; *Radcliffe v. Pacific Steam Navigation Co.*, 26 T.L.R. 319; *Cardiff Corporation v. Hall*, 27 T.L.R. 339.)

Minors.—There is a special rule for a workman under twenty-one at the date of the accident. Here the compensation may be equal to the full average weekly earnings, though it must not exceed 10*s.* per week, and if, subsequently, the workman can prove that if he had not been injured he would now be earning higher wages than he did before the accident, he can, if twelve months have elapsed since the accident, claim to have

the compensation increased to half of what these higher wages would have been.¹ (Schedule I, pars. 1 and 16; see also *Malcolm v. Spowart & Co.*, 6 Butt 856; *Vickers, Sons & Maxim v. Evans*, 3 Butt 403.)

Compensation both for Injury and for Death.—If an injured workman receives compensation for a time and then dies, his dependents have a right to be compensated in respect of his death. But in estimating the amount due the sums paid to the workman while alive must be taken into account (Schedule I, par. 1 (a) (i)).

Redemption of Weekly Payments.—When an employer has made weekly payments to an injured workman for six months he may compel the workman to accept a lump sum in lieu of future payments. This right of redeeming weekly payments is governed by the following rules—

1. The employer may compel the workman to accept a lump sum, but cannot do so until the weekly payments have been going on for six months.

2. The workman has no choice in the matter. If the employer offers the sum prescribed by the Act the workman must accept it. But the workman himself cannot apply for a lump sum in place of weekly payments.

3. If the workman's incapacity is not permanent the lump sum may be fixed by arbitration, and will then, of course, be such amount as the County Court judge, acting as arbitrator, considers reasonable and fair.

4. If the incapacity is permanent, the arbitrator, if applied to, must fix the lump sum at such an amount as will buy a Post Office annuity equal to three-quarters of the yearly value of the weekly payments. A copy of the annuity tables may be obtained free of charge at any Post Office.

Workmen should be very cautious in accepting lump sums instead of weekly payments when the County Court judge has not fixed the amount. It should be borne in mind that when a workman is permanently and totally disabled the lump sum offered him should be sufficient

¹ He cannot, of course, get more than £1 a week.

to bring him in for the rest of his life a weekly sum equal to three-eighths of his wages. Thus, if a man of thirty, earning 32s. per week, is permanently and totally disabled he is entitled to a sum sufficient to buy him a life annuity of 12s. per week, *i. e.* about £638 (Schedule I, par. 17).

Compensation of Injured Persons, etc., out of Fines.—Fines imposed under the Coal Mines Act, 1911, for neglecting to send notice of any accident, or for any offence against the Act causing personal injury or loss of life, may be applied to compensating the victims of the accident, offence, etc., or their relatives in case of death (Section 105, C.M.A., 1911). The Factory and Workshop Act, 1901, Section 136, contains a similar provision respecting fines imposed for offences against that Act.

WHO IS ENTITLED TO COMPENSATION?

Where the accident is not fatal the injured workman receives the compensation. Where it is fatal his dependents, if he leaves any, receive it, but if he leaves no dependents the reasonable expenses of medical attendance and funeral must be paid.

As compensation can only be claimed where the person killed or injured is a workman, it is first of all necessary in every case to be sure whether the victim of the accident is a workman. According to section 13 the following persons are not workmen—

1. A person employed in non-manual labour who is paid more than £250 a year.
2. A casual worker who is not employed for the purposes of the employer's trade or business (as to meaning of casual worker, see p. 176).
3. An outworker. The definition of outworker given by section 13 is the same as that given in the National Insurance Act, 1911 (see p. 173).
4. A member of the employer's family, dwelling in the employer's house.
5. A policeman.

Persons employed in the naval or military service of

the Crown are not within the Act. Other employees of the Crown are within it (section 9).

Seamen (including masters and apprentices) on British ships are within the Act if they otherwise come within the definition of workmen. Fishermen also are included except where they are paid by a share in the profits or gross earnings of the vessel. Compensation is not payable to an injured seaman for any period during which the owner is bound, under Section 34, M.S.A., 1906,¹ to maintain him (section 7).

Where an injured seaman is discharged or left behind in a British Possession or in a foreign country, full particulars of the accident must be furnished on oath to a judge, magistrate, or consul, and forwarded by him to the Board of Trade (section 7 (1) (c)).

It should be noticed that the £250 limit only applies to people employed otherwise than by way of manual labour. If, therefore, a workman does nothing but manual work he will be within the Act whatever his wages may be.

Workman or Contractor.—The difference between a workman and an independent contractor must be clearly understood. A contractor is one who agrees to have a certain piece of work done, but who is not bound to do it himself. He may work at it himself, or he may have it done entirely by men under him, or he may both work himself and use other men to help him. The person for whom the work is being done has no voice in choosing the persons who are actually to do it, or in controlling them, but when the work is done he is bound to take it over and pay for it, if it is done satisfactorily.

If a contractor engages in the work himself and is injured, he cannot claim compensation from the person for whom he is working, for he is not a workman. In *Vamplew v. Parkgate Iron and Steel Co.* [1903], 1 K.B. 851, a man had a contract with a company under which he broke steel and cinders. The company supplied the necessary machinery and he was paid on the tonnage of steel and cinders broken. He employed workmen to do

¹ See p. 29.

this work, but also worked himself. It was held that he was not a workman. There are, however, certain arrangements which look like independent contracts but which are really employment at piecework. Such arrangements are contracts of service and the men who do the work are workmen. Thus, in *Dunlop v. McReady*, 37 Sc.L.R. 779, a squad of four platers were engaged by a firm of shipbuilders to prepare certain frames. The men worked themselves, but they had to employ and pay unskilled "helpers." The shipbuilders found all the necessary plant and material, and the work was done on their premises. The men in the squad were bound to work continuously during the working hours recognised in the yards, they were subject to the general rules and regulations of the yard, and the shipbuilders' foreman superintended their work. He did not, however, interfere unless the work was badly done. The shipbuilders paid a fixed sum for each frame, and this was paid weekly to the leader of the squad. The helpers were first paid, and the remaining money was then divided amongst the members of the squad. A member of the squad was killed and compensation was claimed: Held, that he was a workman, and not an independent contractor. It will be noticed that in this case the members of the squad were very much under the control of the employers.

If a workman engages some one else to do his work and that person is injured, he has no right to compensation from the original employer (see *Walsh v. Haynes*, 43 Ir.L.T.R. 114; *McClelland v. Todd*, 2 Butt 472).

An unemployed workman who is given employment by a Distress Committee is a workman within the meaning of the Act, and if he is killed or injured while at work the Distress Committee must pay compensation (see *Porton v. Central (Unemployed) Body for London*, 2 Butt 296). Where an employed workman is given work by a charitable institution he is not within the Act if the institution is a purely charitable one. But if it is an institution run by people who wish to get hold of cheap labour and make money, then its employees come within the Act. (See

Burns v. Manchester and Salford Wesleyan Mission, 99 L.T. 579; *Macgillivray v. Northern Counties Institute for the Blind*, 48 Sc.L.R. 811.)

Dependents.—According to the Act (section 13) a dependent means any member of the workman's family who was either wholly or partially dependent on his earnings at the time of his death. The following may be members of the family within the meaning of the Act: wife, husband, parents, grandparents, step-parents, children, grandchildren, stepchildren, brothers, sisters, half-brothers, half-sisters.

The case of a wife who is living apart from her husband presents some difficulty. A husband is, of course, legally bound to support his wife, but this alone is not sufficient to give her a right to compensation if he is killed. She cannot get compensation unless she was in fact depending upon her husband for support.

In *New Monckton Collieries v. Keeling*, 27 T.L.R. 551, a woman had left her husband in 1888 and for twenty-three years had supported herself and her children by her own exertions. During this time the husband never paid her anything. In 1910 he was killed, and she claimed compensation. It was held that she was not entitled to it as she was not dependent on her husband.

If, however, the wife is not earning her own livelihood, and has no certain means of support, and is still expecting her husband to maintain her, the law may regard her as a dependent, even though he does not give her anything. In *Coulthard v. Consett Iron Co.* [1905], 2 K.B. 869, a workman having lost his employment left home in search of work, but did not get any for three months. Three weeks after getting work he was killed. During the time he was away he did not send any money to his wife, and she and the children lived partly on charity and partly on what she could earn at casual work. Some of the time she spent in the workhouse. But all the time she was expecting her husband to return and provide a home: Held, that she was totally dependent on her husband, and entitled to compensation.

There have been several cases in which a son was paying his wages into a common family fund kept by the mother or father for the support of the whole family. And where this son has been killed it has generally been held that his parents were dependent on his earnings. Thus, in *Main Colliery Co. v. Davies* [1900], A.C. 358, a boy of sixteen earned 8s. a week. He lived at home with his father and mother, and gave them all his wages. They found him in food, clothing, and pocket-money. There were five other children, and two of these were also earning wages and handing them over to their parents. The father himself earned 25s. per week. The boy was killed, and the father claimed compensation. The County Court judge held that the father was partly dependent on the son's earnings, and awarded him £33 8s.

If more than one member of a family is killed, the dependents may obtain compensation in respect of each of them. Thus, in a family of nine, the father and two sons were killed in a colliery explosion. Compensation was paid to the mother and surviving children in respect of the father and of each son (*Hodgson v. West Stanley Colliery*, 26 T.L.R. 333).

The dependents of a workman may claim compensation in respect of his death, even though they are not living in this country (see *Baird v. Birsztan*, 8 F., 438; *Follis v. Schaake Machine Works*, 1 Butt 442, a Canadian case).

An illegitimate child may receive compensation in respect of its father's or mother's death; and a parent or grandparent, who is dependent on an illegitimate child, may also obtain compensation if the child is killed. A child born after its father's death may be entitled to compensation as a dependent (section 13).

When compensation is awarded for the death of a workman the money must, as a rule, be paid into the County Court. The court will then direct how it is to be invested or applied for the benefit of the dependents. And, where it seems necessary, the court may alter the division of the compensation money among the dependents, or it may alter the manner of investing or applying the money due

to any dependent. This power may be usefully exercised when it is found that a widow is neglecting her children (schedule I, pars. 5 and 9).

HOW TO OBTAIN COMPENSATION

Notice of Accident.—When a workman has been injured he must give notice of the accident as soon as possible after it has happened, and before he has voluntarily left his employment (section 2).

It is exceedingly important that the notice should be given as soon as possible. Delay may cause loss of compensation, unless there is a reasonable cause for it. The notice must be in writing, and must give the following information—

1. The name and address of the injured workman.
2. The cause of the injury.
3. The date of the accident.

It must be delivered at the residence or place of business of the employer. Perhaps it is best to send the notice by registered letter so as to be able, if necessary, to prove more easily that notice was given. If the workman for any reasonable cause (such as mistake, absence from the country, etc.) fails to give notice, or gives an inaccurate notice, he will be excused. He will also be excused for not giving a proper notice if he can prove that the employer's defence has not been prejudiced by failure to do so.

It is very common for a workman after an accident to think that his injury is not very serious. He therefore goes on working and says nothing about it, and it may be several weeks, or even months, before the effects of the injury are felt and prevent him from working. Such a state of affairs is a reasonable excuse for not giving notice, and the workman will not lose his right to compensation because of the delay. (See *Rankine v. Alloa Coal Co.*, 6 F. 375; *Ellis v. Fairfield Shipbuilding Co.* [1913], S.C. 217.)

But injured workmen should not rely on excuses; for it is by no means unusual for a man to forfeit the right to compensation by neglecting to give timely notice of

the accident. (See *Fox v. Barrow Hæmatite Steel Co.*, 84 L.J.K.B. 1327; *Millar v. Richardson* [1915], W.N. 244.

The notice need not be given by the workman himself (or by his dependents in case of death). It is sufficient if it is given by some one who is authorised to give it, and probably a notice given by an unauthorised person is good if it is afterwards confirmed. Thus, if a fellow-workman takes it upon himself to give the notice, it will be a good notice if the injured person afterwards informs the employer that he must regard it as a notice from him.

If the injury is due to one of the scheduled industrial diseases (see p. 253), the notice should be given as soon as possible after the workman is disabled, or has been suspended under the Factory Act Regulations. If he has been employed in the dangerous occupation by more than one employer during the previous twelve months, he must give notice to the last employer, and may do so even after he has voluntarily left his employment (section 8).

The Claim for Compensation.—The next step is to make a claim for compensation. This need not be in writing, but it is better to send a written claim. As a general rule the notice and the claim are written at the same time and in the same letter. But the notice to the employer informing him of the accident is not a claim for compensation. There must be a distinct demand for compensation, though it is not necessary to ask for a definite amount.

The time allowed for making a claim is longer than that for giving notice of the accident. Six months are allowed. In non-fatal accidents the six months runs from the day of the accident; in fatal accidents it is reckoned from the date of the death. If the claim is not made within this period, the right to compensation is lost, unless the delay is due to a reasonable cause, such as mistake, or absence from the country, etc. (section 2). In the case of *Smith v. Pearson and Shipley*, 2 Butt 468, a workman was injured and died in December, while his wife was in Canada. As soon as she could earn money for her passage she returned to England, but it was August before she made a claim. It

was held that she had a good excuse, and compensation was granted. (See also *Luckie v. Merry*, 31 T.L.R. 466.)

Where the injury is due to a scheduled industrial disease, the six months is reckoned from the date when the workman is disabled or suspended under the Factory Act Regulations (section 8).

The claim for compensation may (as in the case of notice) be made either by the workman (or his dependents in case of death), or by any one authorised to make it. A claim by an authorised person is probably good, if it is afterwards confirmed.

Bankruptcy of Employer.—The Act provides two remedies for cases where a workman is injured or killed, and his employer becomes a bankrupt before the full amount of compensation has been paid—

1. If the employer was insured against liability under the Act, his rights against the insurance company are transferred to the workman. The workman or his dependents can, therefore, compel the insurance company to pay compensation. If the employer has not insured for the full amount of the liability, the workman can claim the difference from the employer and receive a dividend on it along with the other creditors (section 5 (1) and (2)).

2. If the bankrupt employer is not insured, the compensation due from him is treated as a preferential debt. By preferential debts are meant those debts of a bankrupt which must be paid in full before any other debts can be paid. These debts include rent, rates, taxes, and the wages of employees. By sub-section 3 of section 5, the compensation due to an injured workman or to his relatives (in case of death) is included amongst these preferential debts. But not more than £100 can be obtained in this way from the bankrupt's estate. If the compensation is a weekly sum, the workman is entitled to a lump sum sufficient to redeem the weekly payments as explained above, p. 263. He cannot, however, get more than £100 in this way.

If the amount due to the workman is more than £100, he will stand on the same footing as other creditors for

the balance, *i. e.* he will receive such dividend as the bankrupt can pay.

These provisions also apply to the case of a company which is being wound up.

Workman may Insure Himself.—It should be mentioned that a workman, as well as an employer, may insure himself against accidents. The premium is only a few shillings a year, and, in the event of an accident, he (or his dependents) will be entitled to receive compensation from the employer, as well as what is due under his own policy. It is, however, probable that the total amount thus received must not exceed the man's weekly wages. Thus, it is not advisable for a workman to insure for more than the loss of half his wages. (See *Hey v. Catlow*, and *Bullen v. London United Tramways*, two County Court cases, 8 M.S. 100–113.)

COMPENSATION AGREEMENTS

The following are the different kinds of agreement which are usually made between employers and workmen or their relatives regarding the payment of compensation—

1. Where a workman has been injured the employer may agree to pay him a weekly sum as compensation, thus avoiding the expense, delay, and trouble of legal proceedings. Similarly, if a workman is killed the employer may agree to pay his dependents a lump sum.

2. Where a workman is seriously injured, and is likely to be disabled for a long time, the employer may agree to pay him a lump sum in place of weekly payments (see p. 263).

3. An employer and his workmen may establish a kind of insurance society for the purpose of securing compensation to the workmen or their dependents in cases of accident (section 3).

The law regards these compensation agreements with a very jealous eye. With regard to the first and second kinds mentioned above, a special word of warning is necessary. The danger of misunderstanding and disappointment is so great that a person who believes himself entitled

to compensation should never, under any circumstances, enter into such agreements without the advice of a lawyer or trade union official.

Registration of Agreements.—When the amount of compensation has been fixed by agreement, the agreement must be sent to the Registrar of the County Court for registration. If the Registrar considers the amount inadequate, or has reason to believe that the agreement has been obtained by fraud, undue influence (see pp. 11–12), or other improper means, he may refuse to record the agreement, and refer it to the judge in the following cases—

1. Where it relates to a lump sum to be paid in lieu of weekly payments (see p. 263).
2. Where it relates to compensation payable to a person under any legal disability (see pp. 12–14).
3. Where it relates to compensation payable to dependents.

An agreement that has been once registered can, at any time, be enforced as though it were a County Court judgment. (Schedule II, par. 9; see also Workmen's Compensation Rules, 1907–13.)

The agreement need not be a formal document. A mere letter from the employer is sufficient, if it contains a promise to pay compensation. Indeed, it need not be in writing. (*Cochrane v. Traill*, 37 Sc. L.R. 662.) If, therefore, a workman and his employer come to a verbal agreement as to compensation, the workman may write down the substance of the agreement in his own words and register it. Even when no definite agreement has been made, either in writing or by word of mouth, there may be circumstances from which an agreement may be implied (see p. 2). In such a case the substance of the agreement may be put into words and registered. Where an employer has, for a time, regularly paid the weekly payments due under the Act, his conduct in so doing will go a long way towards proving an implied agreement. But it is not conclusive by itself. (See *Jones v. G.C.R. Co.*, 4 M.S. 23; *Turner v. Bell & Sons*, 4 Butt 63.)

Where a person states in his own words the substance

of a verbal or implied agreement, he must be careful to be quite accurate. The registrar will not record an incorrect statement.

An agreement may be registered any length of time after it is made. There is no six months' limit, as in the case of making a claim. (*Cochrane v. Traill*, 37 Sc.L.R. 662.) It may even be registered after the workman has recovered and returned to work. It is advisable to take this step whenever there is a possibility of the incapacity returning. (See *Cammick v. Glasgow Iron and Steel Co.*, 4 F. 198; *Addie & Sons, v. Coakley*, 46 Sc.L.R. 408.)

Enforcement of Agreements.—If an agreement to pay compensation has been registered, but the employer afterwards fails to make the payments, the workman, by applying to the County Court, may obtain execution against the goods of the employer (see *Workmen's Compensation Rules*). A registered agreement will not be enforced so as to make it possible for the workman to receive more than he was earning before the accident. Thus in *Baird & Co. v. M'Whinnie* [1908] S.C. 440, a workman earning 28s. 10d. a week was injured, and his employer agreed to pay compensation at the rate of 14s. 5d. a week. The agreement was registered, and the employer made the payments for several weeks. Then the man returned to work at a wage of 23s. 2d. a week, and some time afterwards attempted to force the employer to pay the 14s. 5d. a week previously agreed upon. As this, together with his present wages, would have amounted to more than his old wages, the agreement could not be enforced. The most the workman could claim was the difference between his old and his new wages, viz. 5s. 8d. per week.

Rescission of Agreements.—An agreement for the payment of compensation may be set aside for the following reasons—

1. Absence of consideration. (See p. 5.) In the case of *Hughes v. Vothey Quarry Co.*, 1 Butt 416, a quarryman was injured during some blasting operations, and received compensation for four months. The amount paid to him during this time was £10 11s. 1d. On returning to work

he signed an agreement which stated that he had received £10 11s. 1d., and that he released the employers from all claims. Eight months later he began to feel the effects of his injuries again, and made another claim for compensation. The County Court judge held that the workman was still entitled to compensation. The agreement was not binding on him as there was no consideration. The £10 11s. 1d. had been already received by the workman before the agreement was made. The workman had, therefore, received nothing in return for his agreement not to make any further claims.

2. Mistake, fraud, or undue influence. (See pp. 11–12, also p. 273.) In *Crossan v. Caledon Shipbuilding and Engineering Co.*, 43 Sc.L.R. 852, a workman was injured, his employers agreed to pay him compensation, and the agreement was registered. They were, however, insured against liability under the Act, and after payments had been going on for some time an officer of the insurance company visited the man and persuaded him to sign a paper discharging the company from liability. The man was very weak at the time, but the officer told him that the medical man who had examined him had reported that he would be well again in a few months. He did not read the report to the man, and, as a matter of fact, the report stated that probably the man's disablement would last for a few months, but that his progress had been so slow that it was impossible to say when he would be better. The agreement to discharge the company from liability turned out to be a very unfavourable one for the man, as he did not recover. He, therefore, brought an action claiming that it should be set aside on the ground of misrepresentation and mistake: Held, that the agreement must be set aside. The Lord Chancellor said that when a man is in broken health and without advice and, under these conditions, signs a discharge, courts of justice should watch with care the circumstances of such a settlement; and Lord Davey pointed out that the man was a labourer, not a man of very great education, and not of more than average intellectual powers. He was weakened by a long

illness, from which he was still suffering. On the other hand, the insurance officer was a man of some ability, and he had had great experience in settling claims of this kind.

3. Infancy or other legal disability. (See pp. 12-14.) In a Canadian case a boy of twenty employed on a railway, was injured. The company paid him twenty-one dollars, and he signed an agreement releasing them from all further liability. He afterwards decided to bring a claim for compensation, and offered to return this money: Held, that as he was under twenty-one the agreement was not binding on him, and that compensation must be awarded (*Darnley v. Canadian Pacific Railway Co.*, 2 Butt 505).

Contracting-out : Compensation Schemes.—If a workman agrees with his employer that he will not claim compensation in the event of his being injured, the agreement is not binding, and if the workman is afterwards injured or killed, compensation may be claimed as though the agreement did not exist. There is, however, one exception to this rule against contracting-out—

Section 3 of the Act allows an employer and his workmen to agree upon a scheme of compensation which shall stand in place of the benefits of the Act. The scheme must be approved by the Registrar of Friendly Societies, and the Registrar will not approve any scheme unless he is satisfied on the following points—

1. That the compensation given under the scheme is not less than the compensation which the Act would give.

2. If the workmen are required to make contributions, the scheme must not only give benefits equal to the benefits of the Act, but must give additional benefits equal to the value of the contributions.

3. A majority of the workmen to whom the scheme applies must be in favour of it; the votes of the workmen are to be taken by ballot.

4. No workman must be required to join the scheme as a condition of being employed. And workmen must be free to withdraw from a scheme if they wish.

The Registrar may approve of a scheme which includes more than one employer and his workmen. If the Regis-

trar approves a scheme he will give a certificate to hold good for five years or more, and he may renew an expired certificate.

It may happen that a scheme which has been approved is not fairly administered, or its provisions may be violated, or it may be that the benefits conferred by the scheme are no longer so favourable as the benefits which the Act itself would give. In such cases a complaint should be made to the Registrar, who will then inquire into the matter. If there is a good cause of complaint the Registrar may cancel the certificate, unless the grievance is remedied. The Registrar has power to revoke the certificate for any other reasons which appear satisfactory to him.

When a certificate expires or is revoked, the liabilities of the scheme must first be discharged. The remaining funds must then be distributed between the employer and the workmen. Should there be a dispute concerning the distribution, the Registrar is to decide the matter.

If a workman agrees to join a scheme of compensation under section 3, his dependents are bound by the agreement, and if he meets with a fatal accident they are only entitled to what the scheme provides for. (*Taylor v. Hamstead Colliery Co.* [1904], 1 K.B. 838.)

Agreements to Give Work.—Occasionally it is a term of a compensation agreement that the employer shall continue to employ the injured workman. Such an agreement does not give the workman a right to employment for an indefinite time. If the employer chooses to dismiss him after employing him for a short time, the dismissed workman has no legal remedy. (*See Lawrie v. Brown & Co.*, 45 Sc. L.R. 477.)

MEDICAL INSPECTION OF INJURED WORKMEN

In order to prevent malingering the employer may require an injured workman to be medically examined. The employer may insist on this examination as soon as notice of the accident is given, or he may demand it after he has been making weekly compensation payments for some time. If the workman refuses to be examined, or

if he obstructs the examination, his right to compensation is suspended until he allows himself to be examined. The employer may select the doctor who makes the examination and must pay him.

When the employer has had an injured workman medically examined, he should send him a copy of the doctor's report within six days. In the same way, if the workman is examined by his own doctor, he should send the employer a copy of the report within the same time. If the employer and workman cannot agree as to the workman's condition or fitness for work, they should both apply to the Registrar of the County Court to have the matter settled by a medical referee.

There may be a dispute between the workman and the employer as to whether the workman's incapacity is due to the accident, or as to how far it is due to the accident. In this case also the Registrar may order the question to be settled by a medical referee, if both employer and workman desire it. In either case the Registrar must be paid a fee. This fee is reckoned as follows : Multiply the amount of the weekly payment by 26, and then reckon 1s. in the pound. The total must not, however, be more than £1.

The medical referee will give a certificate as to the workman's condition and fitness for work ; and, if necessary, he must say what kind of work the man is fit for. This certificate is conclusive evidence of the matters contained in it.

The workman must allow himself to be medically examined by the referee, if necessary. If he refuses to be examined, or obstructs the examination, his right to compensation will be suspended until the examination takes place.

If the workman refuses for a time to be medically examined, or obstructs the examination, but afterwards gives way and allows the examination to take place, he may become entitled to compensation again. But no compensation will be paid for the period of suspension. (Schedule I, pars. 4, 14 and 15; and Workmen's Compensation Rules.)

The workman has not a right to have his own doctor

present at the examination unless there are special circumstances which make this necessary. In *Morgan v. Dixon*, 5 Butt 184, an injured workman refused to be examined by the employer's doctor unless his own doctor was present. It was held that this refusal was an obstruction and compensation was refused. But there may be cases where the workman's constitution and state of health make it advisable for his own doctor to be present. Thus, in a case of heart-weakness, etc., the workman may rightly insist on his own doctor being with him during the examination.

The employer himself is not entitled to be present at the examination (*Bowden v. Barrow Bros.*, 3 M.S. 215).

An injured workman who leaves the country may be regarded as having obstructed medical examination. In *Finnie & Sons v. Duncan*, 7 F. 254, an injured workman received compensation for more than a year and then went to Australia without informing his employer. The employer applied to the court to have the payments ended on the ground that they could not have the man medically examined. It was held that he had obstructed the examination and compensation was suspended. If, however, the workman is really willing to be examined the employer cannot end the compensation payments because the workman will not travel a long distance for examination. Thus, in *Baird & Co. v. Kane*, 7 F. 461, a workman in Scotland was twice medically examined and on each occasion the doctor reported that he had not recovered. After the second examination he left Scotland and went to his home in Ireland. About six months later the employers refused to pay any more unless he came to Glasgow for another examination. This he refused to do unless his expenses were paid, but he offered to go to the town nearest to his home in Ireland and be examined there at the employers' expense. It was held that the workman had not obstructed the examination and that he was still entitled to compensation.

The Act makes a provision for cases of this kind where a workman receiving weekly compensation wishes to go

and live outside the United Kingdom. The Registrar may refer him to a medical referee. If the referee certifies that the injury is likely to be permanent, he will then be able while abroad to draw his compensation quarterly so long as he proves his identity and proves that his incapacity continues. Should he neglect to obtain the certificate his right to compensation ceases as soon as he leaves the country. (Schedule I, par. 18; and Workmen's Compensation Rules, Rule 60.)

Refusal to Undergo Operation.—It often happens that after a workman has been medically examined the doctor advises him to undergo an operation, and in some cases the workman has forfeited his right to compensation because he would not consent to the operation. But this only takes place when the operation is a trivial one, not involving serious danger. A workman is never penalised for refusing to undergo a dangerous operation. Thus, in *Donnelly v. Baird* [1908], S.C. 536, a workman who could not use one hand received compensation for three years. Then it was discovered that by amputating one finger and removing a hard lump in the palm the power could be restored to the hand. The operation was not painful nor dangerous, but the man refused to undergo it. It was therefore held that he had no right to further compensation.

In *Dowds v. Bennie & Sons*, 5 F. 268, a man with an injured ankle had been told to exercise the joint by walking and by getting some one to move it for him. Massage had also been recommended. The man neglected to follow this advice, and, as a result, compensation was stopped.

In *Smith v. Cord Taton Colliery Co.*, 2 M.S. 121, a man with a broken shoulder bone was told by his doctor to move his arm as much as possible after the splints had been removed. But the man was constitutionally nervous and the accident had increased his nervousness. He did not therefore obey the doctor's instructions and after six months the joint was quite stiff. In this case the man was not deprived of compensation as his conduct was not due to carelessness or obstinacy.

Tutton v. Owners of Steamship Majestic, 25 T.L.R. 482, was a case of a seaman who had been ruptured and was advised to undergo an operation. His own doctor, however, warned him that he was suffering from Bright's Disease and that it would be dangerous for him to be put under chloroform. He therefore refused to undergo an operation, and it was held that the refusal was reasonable and did not destroy his right to compensation.

Compensation Agreements based on Medical Reports.—It is inadvisable for a workman to enter into an agreement for compensation on the strength of the report of a single doctor. In *Dornan v. Allen*, 3 F. 112, an injured workman was examined by a surgeon employed by an employers' association. This surgeon reported that the man would be fit for work in six weeks from the date of the accident. About a month after the accident the employers' foreman called on the workman and offered him £2 7s. 4d., and asked him to sign a receipt discharging the employers from all liability. The foreman told the workman what the doctor had reported and the workman then took the money and signed the receipt and discharge. As a matter of fact the doctor's opinion proved to be wrong, for it was nearly six months before the man recovered. It was, however, held that the workman was bound by the discharge which he had signed.

Medical Certificates in Cases of Industrial Disease.—A workman who has contracted an industrial disease must, before claiming compensation, obtain a certificate from the certifying surgeon appointed under the Factory and Workshops Act. The name and address of the surgeon should be posted up in every factory and workshop. The certificate is not necessary where the disease has proved fatal, nor is it necessary if the workman has been suspended under the Factory Act Regulations on account of having contracted the disease.

If a certifying surgeon refuses to give a workman a certificate the matter may be referred to a medical referee, and similarly an employer may appeal against a certificate (Section 8, W.C.A.).

WORKMAN INJURED BY NEGLIGENCE OF A STRANGER

A workman while working for his employer may be injured by the negligence, or wilful act, or omission of some third person for whom the employer is not responsible. In such a case the workman (or his dependents, if he is killed) may either recover compensation from the employer under the Workmen's Compensation Act, or may bring an action for damages at common law or under Lord Campbell's Act against the third person. If the workman or his dependents elect to proceed against the employer under the Workmen's Compensation Act, and succeed in recovering compensation, the employer may recover from the third person the amount which he, the employer, has paid in compensation (Section 6, W.C.A.).

SUB-CONTRACTING

A person—the principal employer—may have undertaken to carry out certain work; and another person—the contractor—may have agreed to perform that work or part of it. If a workman employed by the contractor is injured he may either claim compensation from his immediate employer—the contractor, or he may claim from his indirect employer—the principal. There are certain exceptions to this rule.

If the workman decide to claim from the principal and is successful, the principal may recover from the contractor anything he has had to pay to the workman (Section 4, W.C.A.).

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